

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BITVESTMENT PARTNERS LLC, :
Plaintiff,
: -against-
COINLAB, INC., CLI HOLDINGS, INC., ALYDIAN :
INC., PETER VESSENES, and JOHN DOE, :
Defendants.
----- X

13 Civ. 7632 (RWS)

**SUPPLEMENTAL DECLARATION OF BRYAN REYHANI IN SUPPORT OF
PLAINTIFF'S PRELIMINARY INJUNCTION**

BRYAN REYHANI declares as follows pursuant to 28 U.S.C. § 1746:

1. I am an attorney duly admitted to practice before the Bar of this Court and am a partner at the law firm Reyhani Nemirovsky LLP, attorneys for Plaintiff in this action.

2. I make this supplemental declaration pursuant to Local Rule 6.1(d) and in support of Plaintiff's preliminary injunction continuing the restraints set forth in the second Temporary Restraining Order and requiring Defendant CoinLab Inc. to turn over to Bitvestment's counsel 7,984.006735 bitcoins to be held in escrow pending the conclusion of this matter, and employ best efforts as set forth in the proposed accompanying order or, alternatively, requiring the immediate delivery of the 7,984.006735 bitcoins in Defendants' control to Plaintiff.

3. In support of Plaintiff's Supplemental Memorandum, I attach as Exhibit A hereto a true and correct copy of the U.S. Bankruptcy Court, Washington State, *In re CLI HOLDINGS, INC. dba ALYDIAN*, No. 13-19746-KAO ("Bankruptcy Proceeding") January 10, 2014 Transcript of the hearing before the Honorable Karen A. Overstreet.

4. The following transcript excerpts are particularly relevant to the issues currently before the Court.

i. **The Court questions whether CoinLab, not Alydian, owns the mining rigs:**

THE COURT: You have Exhibit 1 that has a really detailed listing, and some of the items on there have large values ascribed, but where do I actually find the rigs on Schedule B?

MS. GLYNN LEVIN [DEBTOR ALYDIAN'S COUNSEL]: I'm not sure that the rigs -- well, I should be careful about saying that.

THE COURT: And I only ask because in Exhibit N, the operations agreement that Mr. Vessenes signed post-petition, it says, "In order to implement the system Alydian requires, and CoinLab is willing and able to provide, use of CoinLab's computer hardware, mining rigs, mining chips, inventory, hosting contracts, offices, etc.," which implies to me that it's CoinLab which owns the rigs and not the debtor.

Tr. 12:13-13:1

ii. **The Court questions bonus payments made by Alydian to CoinLab employees post-petition:**

MS. GLYNN LEVIN: The actual bonuses that were paid in December were only a total of \$46,000 to two of the three members of the team. . . .

THE COURT: So I'm trying figure out --

MS. GLYNN LEVIN: Yes.

THE COURT: -- how in a Chapter 11 proceeding the debtor pays random bonuses without any court approval at all and without demonstrating that there's a contract in place.

MS. GLYNN LEVIN: Well, they --

THE COURT: How does that happen?

MS. GLYNN LEVIN: They --

THE COURT: I haven't read the bankruptcy code provision, but there is even a provision in the bankruptcy code for the payment of incentive compensation.

MS. GLYNN LEVIN: There are, and they are not employees of the debtor. They are employees of CoinLab.

THE COURT: So that concerns me even more. Now what you're saying is the debtor agreed to pay significant incentive compensation to employees of an insider without any court approval at all.

Tr. 23:15-24:1

iii. The Court finds Mr. Vessenes is not a credible witness

THE COURT: Well, I'm not satisfied that there isn't some hiding of information, . . .

. . .

THE COURT: I know full well that our -- one of our panel trustees is likely not going to be able to operate this business, so we need to find a way to get some money to creditors that makes sense. But if you're asking me am I satisfied with the credibility of Mr. Vessenes? No, I am not.

Tr. 39:15-40:1

iv. The Court is concerned about transfers of money to CoinLab

THE COURT: I mean, my preference would certainly be that CoinLab shouldn't be paid anything except by a motion and order of the Court, or somebody needs to be looking at the invoices. Because this is a lot of money being transferred to what is clearly an insider.

MS. GLYNN LEVIN: Yes.

THE COURT: Before and after bankruptcy with virtually no oversight by anyone, and that concerns me.

Tr. 41:17-24

v. The Court is concerned that Mr. Vessenes was caught [lying] at his deposition

THE COURT: I guess I don't understand how the mining works such that when the November monthly report was filed on December 17th, it showed no revenue, and it wasn't until the day after Mr. Vessenes's deposition that it was amended to show \$1.8 million.

. . .

THE COURT: Well, he's not testifying. I mean, here's the problem. I am being left with the impression that Mr. Vessenes got caught at his deposition when confronted with these numbers and had to disclose them --

MS. GLYNN LEVIN: No.

THE COURT: -- that, in fact, the company had earned \$1.8 million. And the debtor needs to do something to dispel that impression.

Tr. 58:1-7 and 60:15-22

vi. The Court questions whether transfers to CoinLab by Alydian are valid

THE COURT: With regard to CoinLab, I am not satisfied with these huge payments to CoinLab without any court approval. We have post-petition agreements and payments; prepetition, possibly; very large preference transactions.

Tr. 121:23-122:4

vii. The Court determines that the operating agreement between Alydian and CoinLab is invalid

THE COURT: Post-petition contracts. I suppose the debtor could argue this was in the ordinary course of business, but I'm going to say it's not. A contract signed between the debtor and a related entity which is signed by the person that I am counting on to be in charge of the debtor in possession, Mr. Vessenes, when he signs with both hats on, I have to have all of my systems on high alert. And with a contract like this, it says a number of things that are interesting in the proprietary materials section. We actually have, "CoinLab hereby assigns and transfers to Alydian, without separate consideration, all right, title, and interest that CoinLab may have in the proprietary materials." I don't know what that means or why that's in here, but things like that concern me when the person who is supposedly the business person interacting with Ms. Glynn Levin has signed on behalf of both companies. This is not valid until there is a motion to approve it, notice to creditors, and an order signed by me.

Tr. 125:11-126

viii. The Court is considering dismissing the case sua sponte

THE COURT: [T]his is in reality a two-party dispute, and I agree with that, and I am very close to sua sponte dismissing this case and letting the parties just fight it out in state court or in federal court in New York, where perhaps they ought to be.

Tr. 119:2-6.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15th day of January 2014, New York, New York.

/s/ Bryan I. Reyhani
Bryan I. Reyhani

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3)
4 In Re:) No. 13-19746-KAO
)
5 CLI HOLDINGS, Inc. d/b/a ALYDIAN,)
)
6 Debtor.)
)

8 HEARTING

9 Before the Honorable Karen A. Overstreet

10 January 10, 2014

11 Digitally Recorded Proceedings

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23 Transcribed by: Shanna Barr, CETD

Reed Jackson Watkins

206.624.3005

1 A P P E A R A N C E S

2

3 For CLI Holdings Inc.:

4 DEIRDRE GLYNN LEVIN
5 Keller Rohrback LLP
6 1201 Third Avenue
7 No. 3200
8 Seattle, Washington 98101

9

10 For Bitvestment Partners LLC f/k/a Dalsa Barbour LLC:

11 TEREZA SIMONYAN
12 Lane Powell PC
13 1420 Fifth Avenue
14 Suite 4200
15 Seattle, Washington 98101

16

17 For Soule Investments:

18 JERRY N. STEHLIK
19 Bucknell Stehlik Sato & Stubner LLP
20 2003 Western Avenue
21 Suite 400
22 Seattle, Washington 98121

23

24 For CoinLab:

25 JANE PEARSON
26 Foster Pepper PLLC
27 1111 Third Avenue
28 Suite 3400
29 Seattle, Washington 98101

30

31 Also Present:

32 WENDY WALLACE
33 General Counsel for CoinLab

34

35

1 January 10, 2014

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4 THE COURT: Good morning. Please have a seat.

5 MR. STEHLIK: Good morning, Your Honor.

6 THE COURT: All right. This is the time that I
7 have set for the case CLI Holdings, Inc. It's Case
8 No. 13-19746. It is a motion to establish bidding
9 procedures in connection with a proposed sale. So what
10 I'd like to do is start with appearances for the record.

11 Ms. Glynn Levin, we can start on your side.

12 MS. GLYNN LEVIN: Thanks. Deirdre Glynn Levin on
13 behalf of the debtor, Your Honor. And next to me is the
14 principal of my client, Peter Vessenes.

15 THE COURT: All right.

16 MS. GLYNN LEVIN: And he is available today to
17 testify orally if that's what the Court --

18 THE COURT: Okay. I don't normally -- wouldn't
19 normally take --

20 MS. GLYNN LEVIN: Yes.

21 THE COURT: -- testimony on my calendar, but go
22 ahead.

23 Ms. Simonyan?

24 MS. SIMONYAN: Your Honor, Tereza Simonyan on
25 behalf of Bitvestment Partners LLC. Good morning.

1 Your Honor.

2 MR. STEHLIK: Good morning, Judge. Jerry Stehlik
3 on behalf of Soule Investments LLC, a creditor.

4 MS. PEARSON: And, Your Honor, Jane Pearson here
5 this morning for CoinLab. And with me is general counsel
6 for CoinLab Wendy Wallace.

7 THE COURT: All right. Ms. Glynn Levin, it's your
8 motion, so why don't I turn the podium over to you first.

9 MS. GLYNN LEVIN: Good morning, Your Honor.
10 Deirdre Glynn Levin again on behalf of the debtor, and it
11 is the debtor's motion under Section 363 to seek the
12 approval for bidding procedures.

13 The Court has had some familiarity with this case,
14 but I will briefly review for the record what I think are
15 the key facts, and would like to go through -- then
16 through the law and the elements that the debtor believes
17 it has -- will be able to establish by the end of today's
18 hearing, has established on the record, and then I'd like
19 to address the two objections that were filed. One
20 objection was just filed yesterday at 5:00 p.m., so
21 suffice to say, there was --

22 THE COURT: Okay. Well, responses were due by
23 January 8th.

24 Yours was due later, right? Right. Because I
25 extended it, so it was timely.

1 MS. GLYNN LEVIN: Oh, I'm not saying it wasn't
2 timely, Your Honor, just that there wasn't an opportunity
3 to prepare a written reply. So to the extent I am able,
4 I am happy to address those in my oral arguments. But
5 there are some specific factual allegations that seems
6 important to -- may be important on the record to refute,
7 although in my view, those are not related to the sale
8 motion. They are -- there are other remedies available.

9 THE COURT: Okay. But in my view, they're the
10 elephant in the room.

11 MS. GLYNN LEVIN: All right.

12 THE COURT: Because if I can't trust the debtor to
13 operate post-petition in conformance with the code and I
14 can't trust the debtor's principal to use the monies as
15 required in a Chapter 11 proceeding, then we have a huge
16 problem. So I do need you to address those factual
17 issues today.

18 MS. GLYNN LEVIN: Well, I am happy to address
19 them, but they are -- I mean, they really require the
20 testimony because the basis for some of those objections
21 are in excerpts from a 2004 exam, which we saw, again,
22 yesterday for the first time after 5:00 p.m., and the
23 only way to really address them specifically is to be
24 able to allow Mr. Vessenes to testify.

25 THE COURT: Okay. Well, you can address them with

1 what you think his response will be to those contentions,
2 but I think fundamentally at issue in the case is whether
3 it makes any sense at all to sell equipment at this point
4 in time when the debtor appears to be generating
5 significant income through the mining of bitcoin.

6 MS. GLYNN LEVIN: Yes.

7 THE COURT: So you need to make that comparison
8 for me today.

9 MS. GLYNN LEVIN: Absolutely.

10 THE COURT: How much are we going to get for the
11 equipment versus how much is this debtor able to generate
12 on the monthly basis for the benefit of the creditors.

13 MS. GLYNN LEVIN: Oh, absolutely, Your Honor. And
14 there are -- this case is really all about time. You
15 know, you might say, well, it's really all about bitcoin
16 or it's all about, you know, a virtual currency, but in
17 some ways it's all about time, and it's sort of a ticking
18 time bomb. Not that it's going to explode, but rather
19 it's going to -- that the ability for the economic stream
20 and the business model is -- has changed so rapidly that
21 it makes it imperative to sell these rigs now. And in
22 the debtor's business judgment, it is the right time to
23 sell them right now, and I'll go through that in a little
24 bit more detail.

25 I wanted to make sure that Your Honor had an

1 opportunity to see the supplemental declaration of
2 Mr. Vessenes that was filed on --

3 THE COURT: I did --

4 MS. GLYNN LEVIN: -- January 6th. There are a
5 couple of exhibits to that declaration which I think are
6 really key and which perhaps with more elaboration can
7 help allay some of the Court's concerns.

8 So a little bit about the background to the --
9 again, we have a case that was filed on a fairly
10 expedited basis, November 1st, 2013, and the reason for
11 filing that, while it was alluded to, well, this is not a
12 case that was filed under sort of the typical debtor's
13 circumstances, in fact, it really was very typical in
14 that there was litigation that had commenced in the U.S.
15 District Court in New York, Southern District of New
16 York, and notably brought by the same creditor who is
17 objecting today, and that a stay of that proceeding was
18 necessary under 362. And that actually triggered the
19 filing, and in the course of the next eight to ten weeks
20 we've seen an evolution of facts which will lead me up to
21 the point today where we assert that there are more than
22 adequate grounds for a sale.

23 First of all, how exactly does the debtor operate?
24 Your Honor heard at the 2004 hearing on December 30th
25 that there is an underlying operating agreement which

1 memorializes the past operating protocols between one of
2 the owners of the debtor -- that's CoinLab, Inc. --
3 again, represented by Jane Pearson today -- who owns 65
4 percent of the common stock. The other owner is also a
5 creditor. And all creditor claims, by the way, have --
6 shall I say the deadline has passed. They have not all
7 filed, but the deadline has passed.

8 THE COURT: Deadline for claims.

9 MS. GLYNN LEVIN: Correct. The debtor is in this
10 arrangement, this operating agreement with CoinLab
11 whereby CoinLab sources out the vendors, sources out
12 the -- all the equipment, all the -- all of the parts,
13 really, for these --

14 THE COURT: Okay. But let me stop you for just a
15 second --

16 MS. GLYNN LEVIN: -- mining rigs --

17 THE COURT: -- because there's all kinds of stuff
18 going on in here, like there's ringing and there's
19 vibrating. So if everybody could just turn whatever
20 these things are off.

21 MS. GLYNN LEVIN: Let's make sure everything is
22 off.

23 THE COURT: It's sort of interrupting the flow of
24 Ms. Glynn Levin's argument. I think the buzzing has
25 stopped.

1 MS. GLYNN LEVIN: Under that operation agreement,
2 the -- CoinLab invoices the debtor and the debtor
3 reimburses CoinLab for all of its products, all of its
4 inventory, everything that has been --

5 THE COURT: So you're talking about their
6 prepetition operating agreement, right?

7 MS. GLYNN LEVIN: It's --

8 THE COURT: Because I think, according to the one
9 that Mr. Vessenes signed post-petition, it indicates that
10 they have operated under an informal working
11 relationship, so I don't believe I have seen a
12 prepetition written agreement between these two entities.

13 MS. GLYNN LEVIN: To the best of my knowledge,
14 there is no --

15 THE COURT: Okay.

16 MS. GLYNN LEVIN: -- written agreement, but that
17 has been the protocol. So the -- this operating
18 agreement memorializes the past and makes it clear as to
19 the companies' relative rights and responsibilities.
20 Under that arrangement, CoinLab invoices the debtor for
21 its direct costs plus an administrative fee up to ten
22 percent subject to a maximum of \$5 ,000 per invoice. All
23 of those invoices for the last year were turned over
24 in -- under the Rule 2004 production, and the SOFA --

25 THE COURT: To Bitvestment?

1 MS. GLYNN LEVIN: Yes. And the SOFA 3(b) and 3(c)
2 were amended also to ensure that there was an index of
3 all of those invoice dates, dates of payments and
4 amounts, and there is a -- there's a sort of an
5 evolution. At the beginning, those were paid in dollars.
6 Later they were paid in bitcoin, which is permitted under
7 the operating agreement. CoinLab was not paid out in
8 full. There were some points made about payments made
9 within the first few days prepetition --

10 THE COURT: Two days before the petition.

11 MS. GLYNN LEVIN: Prepetition. Those were based
12 on documented invoices, and CoinLab is, in fact, not paid
13 out in full. It is a general unsecured creditor, and
14 that's documented --

15 THE COURT: So doesn't that make it like a really,
16 really large preference?

17 MS. GLYNN LEVIN: They were -- one would need to
18 go through the preference analysis.

19 THE COURT: One would need to go through that
20 because a payment of in excess of a million dollars two
21 days before the petition date would certainly be the
22 subject of a concern over preference recoveries.

23 MS. GLYNN LEVIN: And we can certainly get into
24 that. In terms of the dollar amount, I'm going to be
25 really careful about talking about dollar amounts when --

1 because these exchange rates that have been used, I mean,
2 they fluctuate in -- with a great deal of -- there's a
3 great deal of variation in them, so to say that there was
4 a transfer made in a certain amount of dollars, at least
5 in the objections that I've seen, there is no real way of
6 calculating how those dollar figures came up. But it's
7 undeniable that those were amounts that were invoiced
8 over the prior couple of months. There has been a
9 regular pattern -- invoice and then payments in either
10 dollars or bitcoin -- and CoinLab -- I mean, CoinLab is
11 essentially the only provider of services, goods and
12 services.

13 THE COURT: But Ms. Pearson can represent
14 CoinLab --

15 MS. GLYNN LEVIN: Yes.

16 THE COURT: -- as to whether these were payments
17 in the ordinary course of business.

18 MS. GLYNN LEVIN: Indeed. Over the course of
19 approximately eight, nine months between December 2012
20 and August 2013, the debtor entered into this -- a number
21 of bitcoin service agreements, and essentially what those
22 were were presales with several customers. The debtor
23 brought a motion to reject those as executory contracts.
24 Only two of those customers objected and a hearing took
25 place on December the 6th. The Soule Investment hearing

1 was continued to next Friday, the 17th. Bitvestment made
2 its arguments, and the debtor's motion was denied. But
3 as to all the other customers, the executory contracts
4 have, in fact, been rejected under the Court's ruling.
5 And all of those creditors, again, except one, actually,
6 filed a proof of claim. There are, as well, two other
7 creditors: XRay Holdings, which is both a shareholder
8 and lender, has a \$3 million claim; and as, again, I
9 said, CoinLab has a trade credit of over \$400,000.

10 Let's get to the assets for the -- that are for
11 sale here. I hope I have done an adequate job in my
12 pleadings to articulate what these assets are, and I --

13 THE COURT: Well, I'm confused, to tell you the
14 truth, because I don't know what they're called. If I
15 look on Exhibit B, where do you actually find them? You
16 have Exhibit 1 that has a really detailed listing, and
17 some of the items on there have large values ascribed,
18 but where do I actually find the rigs on Schedule B?

19 MS. GLYNN LEVIN: I'm not sure that the rigs --
20 well, I should be careful about saying that.

21 THE COURT: And I only ask because in Exhibit N,
22 the operations agreement that Mr. Vessenes signed
23 post-petition, it says, "In order to implement the system
24 Alydian requires, and CoinLab is willing and able to
25 provide, use of CoinLab's computer hardware, mining rigs,

1 mining chips, inventory, hosting contracts, offices,
2 etc.," which implies to me that it's CoinLab which owns
3 the rigs and not the debtor. So then when I go to
4 Exhibit B, I'm wondering, where are they? What are they
5 called on here?

6 MS. GLYNN LEVIN: So I had the same questions when
7 I started working on this case, so let me explain. And I
8 might add that Schedule B was also amended, although it's
9 used, to add bitcoin balances held in accounts totaling
10 approximately \$5,000 as of the petition date. But
11 Your Honor is referring to, really, hardware. So the
12 process is that CoinLab goes out, sources all of this,
13 brings in all of these parts from multiple vendors. And
14 we're talking everything from the screws that the
15 computers are -- used to the chips. Very, very
16 complicated rigs that are then put together into systems.
17 The Schedule B outlined some inventory, which are the
18 parts which were not yet put into systems. In other
19 words --

20 THE COURT: Right.

21 MS. GLYNN LEVIN: -- the miscellaneous parts not
22 yet part of the -- of a launched system. The launched
23 systems actually at the time of the -- at the filing,
24 there really weren't that many launched systems. All of
25 those parts were in the process of being launched, and I

1 think as of --

2 Correct me if I'm wrong, around mid November, the
3 first systems were launched? Would that be correct?

4 MR. VESSENES: No. The first ones were launched
5 in July.

6 MS. GLYNN LEVIN: The first ones were launched in
7 July?

8 MR. VESSENES: And then we just finished -- should
9 have finished today, I think, with the last ones.

10 MS. GLYNN LEVIN: The last ones were finished
11 today. So it's an evolving process, but -- so what we
12 have for sale today is really sort of the culmination of
13 all the services and parts and intellectual --

14 THE COURT: Thirty-four systems.

15 MS. GLYNN LEVIN: Correct, 34 systems. The way
16 it's -- we have framed this for sale is rather by selling
17 the -- rather than selling them for system, in this
18 industry it's -- they are -- it's described as
19 "terra-hash," which is really power or, in my sort of
20 novice way of looking at this, is really kind of like
21 horsepower. It's the power that a system has.

22 THE COURT: Okay. But doesn't that mean that you
23 would then amend Schedule B again to turn this work in
24 process into 34 systems which are generating a total of
25 170 terra-hashes of power?

1 MS. GLYNN LEVIN: Actually, and approximately 200
2 now. I mean, if we were to have to amend Schedule B
3 every time we added power, I would probably be amending
4 that --

5 THE COURT: Right. Agreed.

6 MS. GLYNN LEVIN: -- multiple, multiple times
7 with --

8 THE COURT: Then how do I figure out how the
9 debtor values these systems, and why is it that CoinLab
10 claims to own rigs in this agreement that Mr. Vessenes
11 signed for himself and CoinLab? I mean, who --

12 MS. GLYNN LEVIN: I'm not sure which agreement
13 you're looking at.

14 THE COURT: Well, what I don't understand is we --
15 when we try to sell something in bankruptcy, we actually
16 have to demonstrate to the buyers what's being sold. And
17 I think this is a question Mr. Stehlik asks --

18 MS. GLYNN LEVIN: Yes.

19 THE COURT: -- on behalf of his client. Where is
20 the description of what is being sold, and does the
21 debtor have proof that the debtor actually owns what's
22 being sold?

23 MS. GLYNN LEVIN: Absolutely, Your Honor. I'm not
24 sure what agreement you're referring to that says that
25 the CoinLab owns --

1 THE COURT: I'm referring to the operations
2 agreement dated November 4th, 2013, between CoinLab and
3 the debtor, which was clearly signed post-petition, and
4 it's signed by Mr. Vessenes as the managing director of
5 the debtor, and it's signed by Mr. Vessenes as the chief
6 executive officer of CoinLab. And it says in the
7 recitals that CoinLab is willing and able to provide use
8 of its hardware, mining rigs, mining chips, inventory,
9 etc., making it sound like it's CoinLab that really owns
10 everything. And the only thing referenced in this
11 agreement that appears to be owned by the debtor is
12 called proprietary materials.

13 MS. GLYNN LEVIN: Well, those -- they may start
14 out being owned -- I mean, they are -- the parts which
15 then become launched into systems by the debtor start out
16 as being owned by CoinLab. CoinLab pays for them, for
17 the parts, but then they are effectively manufactured.
18 Like any manufacturing process, it's going through a
19 series of steps, and in our timeline, in our sequence,
20 once those are -- once they are invoiced and the debtor
21 pays for them, then effectively they're owned by the
22 debtor. I don't think -- certainly, counsel for CoinLab
23 can make these arguments as well, but there's no question
24 at all that the debtor owns these. The debtor is on the
25 record saying it's selling them. It has the rights to

1 sell them. No one else is claiming the rights to sell
2 them or own them.

3 THE COURT: So the debtor owns these 34 systems.

4 And I haven't seen the CoinLab invoices, so I don't know
5 whether -- I assume based upon the position you've taken
6 that they do not reserve a security interest in these
7 systems and that the monies they claim they are owed in
8 the proof of claim file are completely unsecured monies.

9 MS. GLYNN LEVIN: Absolutely correct. There is no
10 security.

11 THE COURT: All right.

12 MS. GLYNN LEVIN: There is no security instrument
13 at all here. Does that --

14 THE COURT: So based upon your evidence that's in
15 the record, what do you say is the value that the debtor
16 believes it can obtain by selling these 34 systems?

17 MS. GLYNN LEVIN: Okay. So let's go to value and
18 let's go to sale and let's go to the marketplace.

19 THE COURT: Right.

20 MS. GLYNN LEVIN: Because this isn't a selling --
21 these aren't selling used cars. There's no Blue Book
22 value. There's no appraisal where one comes in and
23 says -- you know, has an independent appraiser who has
24 special qualifications and says, "I think this is what
25 these are due." In fact, the expert -- probably one of

1 the worldwide experts in what these things are valued at
2 is sitting to my right. It's Mr. Vessenes himself. And
3 the objections about the value, I noticed, were not
4 supported by any evidence at all other than some
5 miscellaneous excerpts of his own testimony. There's no
6 other opposing testimony of any expert to say, you know,
7 you're selling these way too low or you're selling these
8 way too high so that, you know, no potential buyer could
9 ever potentially --

10 THE COURT: Well, how I'm --

11 MS. GLYNN LEVIN: -- would ever want to buy that.

12 THE COURT: How I'm looking at it, though, is if
13 the debtor has income of \$1.8 million for one month, the
14 first month of bankruptcy -- in other words, this is a
15 unique debtor because this debtor apparently doesn't
16 suffer any problems as a result of being in bankruptcy.
17 For example, a retail store everybody knows is in
18 bankruptcy, now the sales drop. It's not one of those
19 debtors. This is a debtor that seems to be able to make
20 a lot of money in the post-petition period, so what I
21 need to be convinced is that selling the -- this
22 equipment is going to yield more money than, say --

23 MS. GLYNN LEVIN: Absolutely.

24 THE COURT: -- three, four, five, six months worth
25 of operations. And so that's the question I'm asking is

1 where in the evidence can I find that more money can be
2 made by selling this than just generating bitcoin.

3 MS. GLYNN LEVIN: I do want to address that, and I
4 think the supplemental declaration of Mr. Vessenes and
5 the two exhibits chart that. And it does require a
6 little bit of sort of a combination of economics and
7 science in understanding the risk in the market. And
8 this is a very unique industry. This is not selling
9 stores. This is not selling coffee shops. This is
10 selling essentially the mining rigs, the hardware and all
11 of the software and all of the -- everything that goes
12 along with it to a third-party buyer, either in whole or
13 in parts, to a third-party buyer.

14 And the reason why we are looking at a key
15 change -- in fact, it's not a change right now. It's
16 been a change that has been happening over -- since the
17 debtor actually filed and perhaps even before. It's that
18 the industry is changing so rapidly. The evidence on the
19 record is that more and more miners are joining this
20 industry, way, way more than was ever anticipated, and
21 because more miners are joining this industry and because
22 there is a fixed number of bitcoins that may be mined
23 daily, the profit margin is going down for every miner.
24 Every miner is now having to work harder, and the
25 production -- the demands for production are that much

1 more difficult in order to produce it.

2 Now, yes, the debtor had an excellent December,
3 but the trend is not continuing. The trend is not
4 continuing to go up. In fact, the trend is going the
5 other way. The curve is going the other way, and that's
6 partly because of more and more parties entering this
7 mining space. And, also, the demand for bitcoin is also
8 very fluctuating. It's a -- again, and one could do an
9 entire course in economics just on the demand for bitcoin
10 and all the different factors that go into the demand,
11 everything from Chinese government to what's going on in
12 Germany to whether Overstock.com is accepting it. I
13 mean, there are lots of market forces pro and con.

14 The key thing for your -- for the Court's concern
15 here today is -- and perhaps we should turn to that
16 declaration -- is to look at that and to see if I can
17 answer that, look at those exhibits or offer my client to
18 be able to answer them, answer those questions.

19 So let's look at Exhibit A. It's one that is
20 Document 92-1 on -- in the docket. So if we look at the
21 projection from January 8th going -- of last year, the
22 mining difficulty, which is a function of how many -- is
23 a function of a number of factors, but including how many
24 other miners there are in the market, is very, very low.
25 It's practically at zero. If you look over the next six

1 months, it starts to increase very slowly. It's now
2 going up. We see over at around July 11th it's now going
3 up. It's starting to climb. And by -- say by the
4 petition date, the scale is now increasing, and the
5 figure in our record is that the increase of mining
6 difficulty is now at 43,000 percent, which is a figure I
7 don't think I've ever used before in any, ever, context.

8 Exhibit B shows -- goes to another economic
9 question. It goes back to the question of hardware, the
10 mining rigs. What about those? They are being
11 manufactured by other companies all over the world. A
12 couple were referenced in Mr. Vessenes's declaration.
13 What's happening with the price of mining rigs? Let's
14 look at that, Exhibit B. The mining rigs, which is what
15 we have to sell here, just in the last 30 days -- this
16 graph starts December 8th, 2013, and it ends just the
17 first week of January 2014. Again, we have a clear
18 decline here. And there's no argument that this is not
19 objective evidence. Again, Mr. Vessenes can elaborate --

20 THE COURT: I want to ask you about the monthly
21 report that was filed and how it lists the equipment.
22 The November report listed deployed systems with a
23 value -- or, you know, maybe this is a cost value, but it
24 says \$547,176.

25 MS. GLYNN LEVIN: Yes. Cost value.

1 THE COURT: Right. And then it showed accumulated
2 depreciation of \$364,412. Well, that's a lot if what
3 you're telling me is they only just deployed these
4 systems. So now the debtor says total fixed assets
5 182,765. So I'm still trying to figure out, you sell
6 these rigs, what do you get? Do you get 400,000? Do you
7 get 1.5 million?

8 MS. GLYNN LEVIN: But let --

9 THE COURT: Do you get 10 million?

10 MS. GLYNN LEVIN: So --

11 THE COURT: How do I compare monthly revenue of
12 \$1.8 million to what you're going to get if you sell the
13 equipment? I mean, I agree with you. It's difficult to
14 value, but you're asking that the debtor just be able to
15 go out and sell the equipment, and we have no idea what
16 we're going to get for it and --

17 MS. GLYNN LEVIN: So let's go to that. And there
18 are --

19 THE COURT: Then maybe we should provide that if
20 we don't get more than we want, we just say: Forget it.
21 We're not going to sell it this way.

22 MS. GLYNN LEVIN: I mean, there could be that
23 contingency. But let's address those two points. First
24 of all, shouldn't the debtor just continue to work these?
25 Well, clearly on the record we've got some very -- we've

1 got some highly technically trained people. Not that it
2 necessarily requires, you know, rocket scientists to
3 operate these, but we do have very highly technically
4 trained people who have been working, who have put in
5 their blood, sweat and tears to make these things
6 operate, and they are on the record to say they're only
7 staying until the end of January. So that --

8 THE COURT: So let me understand this clearly,
9 because according to Ms. Simonyan's pleadings that she
10 put in, Mr. Vessenes paid them 300-and-some-thousand
11 dollars to stay, and that was just for one month? Or is
12 that --

13 MS. GLYNN LEVIN: They actually --

14 THE COURT: Are those facts just completely wrong?

15 MS. GLYNN LEVIN: The actual bonuses that were
16 paid in December were only a total of \$46,000 to two of
17 the three members of the team. The third member of the
18 team, Hans Olsen, who has -- was projected to receive a
19 \$54,000 bonus, did not. Did not receive that. Has not
20 been paid that bonus. So two of the underlying --

21 THE COURT: So I'm trying figure out --

22 MS. GLYNN LEVIN: Yes.

23 THE COURT: -- how in a Chapter 11 proceeding the
24 debtor pays random bonuses without any court approval at
25 all and without demonstrating that there's a contract in

1 place.

2 MS. GLYNN LEVIN: Well, they --

3 THE COURT: How does that happen?

4 MS. GLYNN LEVIN: They --

5 THE COURT: I haven't read the bankruptcy code
6 provision, but there is even a provision in the
7 bankruptcy code for the payment of incentive
8 compensation.

9 MS. GLYNN LEVIN: There are, and they are not
10 employees of the debtor. They are employees of CoinLab.

11 THE COURT: So that concerns me even more. Now
12 what you're saying is the debtor agreed to pay
13 significant incentive compensation to employees of an
14 insider without any court approval at all.

15 MS. GLYNN LEVIN: Well, we can certainly go back,
16 and if the Court thinks this is important we can
17 certainly go back and outline of -- it all and --

18 THE COURT: I think it's important, because what
19 I'm not understanding is where Mr. Vessenes draws the
20 line between what he can do outside of bankruptcy and
21 what he can do inside of bankruptcy.

22 MS. GLYNN LEVIN: I'm certainly happy to --

23 THE COURT: And what he can't do is spend money of
24 the estate outside the ordinary course of business
25 without court approval.

1 MS. GLYNN LEVIN: I'm certainly happy to put that
2 forward. But to be clear, these -- this is the team that
3 is operating them, and without any of them, without one
4 of them, the systems don't go. So it's a little --

5 THE COURT: In which case we would have had that
6 in a motion --

7 MS. GLYNN LEVIN: Yes.

8 THE COURT: -- with declarations. People could
9 have objected or not and agreed with you that these
10 people were critical, but instead we find out because
11 Ms. Simonyan or somebody else from her firm took the
12 deposition of Mr. Vessenes and he had to say what
13 occurred. I guess that's --

14 MS. GLYNN LEVIN: Again --

15 THE COURT: -- the problem.

16 MS. GLYNN LEVIN: -- we're talking the total that
17 have actually been paid of bonuses is \$46,000 to two
18 people at Christmastime. So I am certainly happy to put
19 that before the Court and make full disclosure, and the
20 Court can look at that, can look at the basis of the
21 contract. CoinLab can explain why these are employees --
22 well, two of them are employees of CoinLab and one is an
23 independent contractor. There were January bonuses
24 projected or allowed for in a budget, but nothing has
25 been paid. And that's why -- I mean, that's why it's

1 really unfair to have the 2004 excerpts being thrown
2 around without the entire transcript. We don't even have
3 the entire transcript. It's not even a formal
4 transcript. It's a draft. So those are the facts. And
5 I'm certainly happy to -- again, to put Mr. Vessenes on
6 the stand, and he can testify as to those facts. The
7 Court doesn't have to take my word for it.

8 Let's go to the question of what are these things
9 worth. Again, we don't have an independent valuation.
10 There is no Blue Book. There is no appraisal standard
11 for these. This is -- these are, in fact, sort of custom
12 made mining rigs. So where does one go to get a pulse on
13 what that's worth? Well, Exhibit B in Mr. Vessenes's
14 supplemental declaration has some graphing on what these
15 things are being sold for. And this is a very highly --

16 THE COURT: Well, let's read the graph, then.
17 Read it for me.

18 MS. GLYNN LEVIN: Okay.

19 THE COURT: And tell me what it says. What it
20 says is there's a -- there's 20,000 -- I mean, I have to
21 look at it online. So what does it actually say is the
22 per-system price that could be received for the systems?
23 Is it \$30,000?

24 MS. GLYNN LEVIN: Can I have my client help
25 interpret this chart? Because it's pretty technical.

1 THE COURT: Well, I mean, it's tiny, for one
2 thing. I can't see it. If he's the expert, you know,
3 his declaration should just say, "I should be able to
4 sell these for \$30,000 a system."

5 MR. VESSENES: If I -- can I finish --

6 MS. GLYNN LEVIN: Well, Your Honor, they're not
7 being sold per system.

8 THE COURT: Okay.

9 MS. GLYNN LEVIN: They're being sold -- the sale
10 is framed in terms of terra-hash. And the terra-hash, as
11 I said, is really a measure of power, like horsepower,
12 because that's the way it's measured. It's not "I'm
13 buying Computer A or Computer B."

14 THE COURT: So we know how much power we have to
15 sell.

16 MS. GLYNN LEVIN: Approximately 200,000
17 terra-hash.

18 THE COURT: Right.

19 MR. VESSENES: 200. 200.

20 THE COURT: So at what price?

21 MS. GLYNN LEVIN: Approximately 200,000
22 terra-hash. But we --

23 THE COURT: For?

24 MS. GLYNN LEVIN: In our motion, we have proposed
25 that a minimum bid is \$2,000 per terra-hash, and we spent

1 some time looking at what really would be a reasonable
2 minimum bid. And, again, keeping in mind even at the
3 time that we filed the motion to today we could have had
4 fluctuations in the market for what a terra-hash is being
5 sold for in the open market. We came up with a minimum
6 bid of \$2,000 because in our business judgment, and that
7 has not been challenged, in the debtor's business
8 judgment that is a good entry level point for getting as
9 much interest as possible from perspective purchasers.
10 This auction that we are going to propose -- and I have a
11 supplement to our order -- this auction is actually going
12 to be a worldwide auction, and we're actually proposing
13 to -- and I have actually spoken to the Court's very
14 favorite auctioneer to bring that into -- bring that sort
15 of live.

16 THE COURT: Murphy's going to auction --

17 MS. GLYNN LEVIN: Mr. Murphy --

18 THE COURT: -- mining rigs?

19 MS. GLYNN LEVIN: I have spoken to Mr. Murphy, and
20 he said he is available and ready to do it. He is -- I
21 mean, there's nobody else who has any more expertise in
22 auctioning generally than Mr. Murphy, and it seemed to me
23 really -- it seemed to be incumbent on the debtor to
24 ensure that we had sort of a neutral process because --

25 THE COURT: So there isn't some clearinghouse for

1 these sales?

2 MS. GLYNN LEVIN: There is no clearinghouse for
3 these sales. And, really, in order to achieve the best
4 price, we really do need to make sure that it's noticed
5 out worldwide, in addition to having Mr. Murphy as a
6 neutral to help facilitate this auction and to assure
7 that every possible bidder gets the opportunity to come
8 in so we know who they are all, all their requirements
9 for qualified bidders.

10 In addition to that, we have engaged a company out
11 of Florida to help do the PR work, and that contract has
12 been executed today, and we will be asking Your Honor to
13 approve that company to -- as a professional to do the PR
14 and marketing to make sure it gets out there. And they
15 are used to doing this on a sort of crisis, immediate
16 process to put the news out on the Web, to do interviews,
17 to do press releases, to do whatever it takes to get that
18 information out there. And this potential purchaser base
19 is -- I mean, these aren't people hanging out in their
20 offices. They're not venture capitalists.

21 THE COURT: They're not insiders, as
22 Ms. Simonyan's client believes.

23 MS. GLYNN LEVIN: And then -- there is not one
24 interest from any insider as far as I know in this.
25 There have been -- I mean, there has been contact for a

1 number of potential purchasers, and the one thing that
2 Mr. -- that is not -- was not put in the record is
3 Mr. Vessenes's testimony from his 2004 exam that said he
4 is not making an offer, CoinLab is making an offer, so
5 the -- and whether XRay makes an offer, I don't know. It
6 doesn't have counsel.

7 But the whole premise that this is designed
8 somehow to -- because it's some sort of an insider
9 collusion and only people with the special knowledge and
10 the special handshake know how to make a bid, I mean,
11 it's -- to be honest, Your Honor, it's baseless. This
12 debtor has no other purpose in selling these other than
13 to maximize the return to creditors. And as I said, the
14 alternative -- and we're on January 10th. The
15 alternative is that in 21 days, approximately, the staff
16 who are going to continue to operate these and maintain
17 it and run it and track the records and, you know,
18 produce the bitcoin production, they're going to be gone.
19 So at most, if we don't have a sale, we have 21 days left
20 of production.

21 Going back to the numbers. And this -- these
22 large numbers were sort of thrown around: "Oh, there's
23 millions of dollars of production." Again, it's a play
24 on words. The net is not millions and millions of
25 dollars. The debtor has significant cost. Each of the

1 hosting locations is -- are very pricey leases. They use
2 massive amounts of power.

3 THE COURT: Well, let's talk about the leases --

4 MS. GLYNN LEVIN: All right.

5 THE COURT: -- just for a second. Because I got
6 the impression when we were here before that the leases
7 were already something that CoinLab had in place, yet
8 when I looked at the declarations filed, your
9 declarations, I see that only the Sabey lease was in
10 place in August. The Wow -- one Wow lease for 18 rigs
11 was allegedly entered into on the petition date between
12 CoinLab and the lessor, and the second Wow lease was
13 entered into, according to the declaration, on
14 December 19th, so well after the petition was filed.

15 So --

16 MS. GLYNN LEVIN: So --

17 THE COURT: -- now we have CoinLab, which
18 supposedly has the right to charge the debtor dollar for
19 dollar for expenses, entering into what appear to be very
20 expensive leases post-petition, and I was just wondering
21 what the lease rates were before the case was filed
22 because these are --

23 MS. GLYNN LEVIN: The --

24 THE COURT: -- new leases. These aren't leases
25 that were in existence as of the petition date.

1 MS. GLYNN LEVIN: They have all been negotiated
2 with some hard-fought negotiating, as I understood --

3 THE COURT: Well, how do you know that?

4 MS. GLYNN LEVIN: I --

5 THE COURT: I mean, have you been in --

6 MS. GLYNN LEVIN: I have not been --

7 THE COURT: Have you been a part of these
8 negotiations?

9 MS. GLYNN LEVIN: I have not been directly.

10 THE COURT: Because this is -- one of them is
11 \$198,000 a month.

12 MS. GLYNN LEVIN: That is the cost of --

13 THE COURT: For ten rigs.

14 MS. GLYNN LEVIN: That is the cost of -- these
15 things don't go in an office building. These things go
16 in very highly specialized environments that have proper
17 cooling, that have proper temperature control, that have
18 proper security.

19 THE COURT: Okay. But if you just stop and think
20 about it, you can see how now I would want to have some
21 background information about what the debtor was paying
22 before so that I know that the debtor and CoinLab haven't
23 significantly trumped up the value. Because I don't see
24 any of this on the debtor's monthly report for November.
25 Where is the payment --

1 MS. GLYNN LEVIN: That's --

2 THE COURT: -- made to CoinLab on the debtor's
3 November monthly statement?

4 MS. GLYNN LEVIN: So the leases are between
5 CoinLab --

6 THE COURT: Right.

7 MS. GLYNN LEVIN: -- and these third parties,
8 Sabey and Wowrack.

9 THE COURT: But the debtor pays CoinLab.

10 MS. GLYNN LEVIN: Yes.

11 THE COURT: And the debtor did --

12 MS. GLYNN LEVIN: They are --

13 THE COURT: -- pay CoinLab.

14 MS. GLYNN LEVIN: They are passed through. The
15 leases -- there may be some new leases, but they -- there
16 weren't --

17 THE COURT: Right.

18 MS. GLYNN LEVIN: There weren't earlier leases for
19 the same space that were then changed or modified. These
20 are new leases. Remember, these are things that are
21 being launched over time. So there may have been one
22 lease on a month. Then one --

23 THE COURT: So it's amazing because on the
24 petition date the debtor had only six rigs that were
25 operating -- well, plus 18, because that happened right

1 on the petition date, and then ten new rigs were placed
2 into service in the middle of December. That's what --
3 how this works?

4 MS. GLYNN LEVIN: Yes.

5 THE COURT: Okay. So then going back to the
6 November monthly statement, I was still looking for a
7 line item for the invoiced payments that the debtor makes
8 to CoinLab for those past due expenses, and I don't know
9 which line item it's on. That's all I'm saying.

10 MS. GLYNN LEVIN: Would Your Honor like me to look
11 for that now?

12 THE COURT: Well, somebody should tell me, yeah,
13 because I'm trying to figure out -- I was, like you,
14 trying to figure out, okay, I assume \$1.8 million isn't
15 the net monthly income. I assume there were some
16 expenses that need to be deducted from that. And then
17 when I looked at the expenses, I didn't really see -- I
18 see an officer salary of \$20,000. I mean, is that one
19 person?

20 MS. GLYNN LEVIN: That's Mr. Vessenes' salary,
21 which was not paid.

22 THE COURT: And he makes \$20,000 a month?

23 MS. GLYNN LEVIN: As I said, that's Mr. Vessenes's
24 salary, which was not paid. He is not paid. He has not
25 received a dime since the --

1 THE COURT: So rent I see 3,058. General and
2 administrative, 43,000.

3 MR. VESSENES: Here's, like -- so here, example,
4 these are the Wowrack. Like, there's Vessenes A and E.
5 That's a Wowrack bill. And then here -- and this is what
6 we gave to the trustee -- here are the budget estimates
7 for hosting.

8 MS. GLYNN LEVIN: Okay. So I'm --

9 THE COURT: So there's a loss of \$66,913, but only
10 because there was no profit shown on the original
11 November statement, and then depreciation is the other
12 big number on here.

13 MS. GLYNN LEVIN: Right.

14 THE COURT: So where's CoinLab?

15 MS. GLYNN LEVIN: So the -- I think what I'd like
16 to do, Your Honor, is turn over a document that has
17 actually already been produced in the 2004 exam. It's
18 actually Bates stamped here at the bottom, and it's a
19 budget that was produced to the U.S. trustee, who is here
20 today, by the way, and he has told me he's not objecting
21 today 's motion. I think he can vouch for the fact that
22 we turned out -- we turned over this budget. May I pass
23 up a copy to Your Honor?

24 THE COURT: Go ahead.

25 MS. GLYNN LEVIN: So --

1 THE COURT: So it's one I haven't seen, right?

2 MS. GLYNN LEVIN: I think that this is not -- I
3 don't believe this is part of the -- of the U.S. -- of a
4 monthly operating report. It may have been. We were
5 asked to turn it over. I just can't recall. So this is
6 Bates stamped.

7 THE COURT: So Ms. Simonyan has seen it?

8 MS. GLYNN LEVIN: Yeah. It's Bates stamped 11 --
9 CLI Chapter 11, and it's numbered starting at 115 through
10 136. And this is probably a -- well, it's about 30 or --
11 let's say 20 or so pages of probably well over 2-, maybe
12 3,000 pages that were produced under the 2004 exam.

13 THE COURT: So this shows what the actual payments
14 are supposed to be.

15 MS. GLYNN LEVIN: This were the operating
16 expenses, yes.

17 THE COURT: So it's hosting expense. That's the
18 line item. Contractors.

19 MS. GLYNN LEVIN: Yes. Hosting expense.

20 THE COURT: Hosting expense.

21 MS. GLYNN LEVIN: It's the fifth line down.

22 THE COURT: Wow, severance of \$105,000 in December
23 and January?

24 MS. GLYNN LEVIN: Again, as I articulated before,
25 the only severance that was paid was the 40- -- I think I

1 said \$46,000. That was budgeted. It was set aside.

2 It's still sitting there. It's been untouched. Ensuring
3 that the key staff people stay on is a pretty
4 important --

5 THE COURT: Okay. Well, I want to keep arguing
6 that one because --

7 MS. GLYNN LEVIN: Right.

8 THE COURT: -- what I think is it violates the
9 bankruptcy code to pay severance and bonuses without a
10 motion and court approval. So we're going to have to
11 get -- I'm going to have to get past that --

12 MS. GLYNN LEVIN: I will certainly make sure --

13 THE COURT: -- with this debtor or the case is not
14 long for debtor in possession or we'll have to have some
15 kind of trustee, but there have to be some limits on what
16 the debtor can do with the money that follows the
17 bankruptcy code. That's all. I mean, I see it on here
18 on this budget. This was not a budget that --

19 MS. GLYNN LEVIN: It's on --

20 THE COURT: -- I saw or ever approved, so...

21 MS. GLYNN LEVIN: It's on a budget. It is not --
22 as I said, the only -- I mean, they were basically
23 Christmas bonuses to two staff employee people in
24 December. Nothing has been paid in January. Nothing.

25 THE COURT: Okay.

1 MS. GLYNN LEVIN: Mr. Vessenes has been paid
2 nothing.

3 So you were -- the Court was concerned about the
4 hosting and exactly how that works?

5 THE COURT: Well, is that the -- so the CoinLab
6 line items are contractors, right? Is that one? 59,750.

7 MS. GLYNN LEVIN: CoinLab line items.

8 THE COURT: Contractors. I assume those are
9 the -- well, I'm trying to figure out what are the --
10 which line items show the pass-through expenses, and I'm
11 guessing contractors would be.

12 MS. GLYNN LEVIN: All of them.

13 THE COURT: Right.

14 MS. GLYNN LEVIN: All of them.

15 THE COURT: So hosting expense, contractors.
16 What's NRE?

17 MR. VESSENES: Nonrecurring engineering costs for
18 installation of systems.

19 MS. GLYNN LEVIN: There we go. Nonrecurring
20 engineering costs for installation of systems.

21 THE COURT: And administrative services?

22 MS. GLYNN LEVIN: It's explained in the column on
23 the right-hand side.

24 THE COURT: Oh, okay. And administrative
25 services. Travel?

1 MS. GLYNN LEVIN: There are -- members of the team
2 work in various places, and the systems are hosted in
3 various places. They're not all in one place. They're
4 in Eastern Washington. They're in Western Washington.
5 There are offices in Portland. So it requires travel and
6 it requires people to be on site to take care of this
7 and --

8 THE COURT: And then small office rent.

9 MS. GLYNN LEVIN: Very small office rent.

10 THE COURT: All right.

11 MS. GLYNN LEVIN: I mean, I really want to make
12 sure that the Court is satisfied that there isn't some
13 hiding of information. I mean, this is as transparent
14 as --

15 THE COURT: Well, I'm not satisfied that there
16 isn't some hiding of information, but I'm willing to -- I
17 mean, what we're here today is -- what we're doing is
18 we're here today to talk about whether or not the
19 debtor's equipment should be sold versus continuing to
20 operate the business.

21 MS. GLYNN LEVIN: Yes.

22 THE COURT: I know full well that our -- one of
23 our panel trustees is likely not going to be able to
24 operate this business, so we need to find a way to get
25 some money to creditors that makes sense. But if you're

1 asking me am I satisfied with the credibility of
2 Mr. Vessenes? No, I am not. And so what I need is to
3 get to a believable scenario for selling the equipment
4 and realizing more income than the debtor can realize by
5 operating even for a couple of months. And that's why
6 the income and expenses are important to me, because, I
7 mean, Ms. Simonyan is going to get up, and she's going to
8 argue that this debtor can make more money by operating,
9 and I still can't get to November, because the way
10 November worked was there was an amended report filed
11 that only had income on it. So am I just supposed to
12 substitute that number --

13 MS. GLYNN LEVIN: There --

14 THE COURT: -- gross sales, and then do the math,
15 and that's what the net -- what is the debtor's net
16 profit for November?

17 MS. GLYNN LEVIN: That's because there were
18 invoices issued from CoinLab to the debtor in the month
19 of November, but they were not paid. So the expenses
20 that were actually paid, disbursed dollars or coins
21 actually paid out in the month of November 1 through 30?
22 The answer was zero. They have been paid out in
23 December.

24 THE COURT: So they --

25 MS. GLYNN LEVIN: That report's not due yet.

1 THE COURT: I see. So I don't -- you don't know
2 or nobody's figured out yet what the net profit for
3 November and what the net profit for December is?

4 MS. GLYNN LEVIN: We will -- we can certainly give
5 estimates. And, again, Mr. Vessenes is here. I
6 understand the Court's concerns, Your Honor, but to do --
7 I mean, we were operating -- I mean, this is as close to
8 rotting fish as you get. And any case where a lawyer,
9 where a counsel comes in and says, "My client has rotting
10 fish, can we please sell it," yes, everybody's
11 credibilities gets scrutinized because of the heightened
12 time and the urgency of it all. But if there is any
13 concern about Mr. -- about there not being sufficient
14 documentation in the record, well, I will take that upon
15 myself. I would certainly hate to have my own client's
16 credibility be questioned when it -- if it was my fault.

17 THE COURT: I mean, my preference would certainly
18 be that CoinLab shouldn't be paid anything except by a
19 motion and order of the Court, or somebody needs to be
20 looking at the invoices. Because this is a lot of money
21 being transferred to what is clearly an insider.

22 MS. GLYNN LEVIN: Yes.

23 THE COURT: Before and after bankruptcy with
24 virtually no oversight by anyone, and that concerns me.

25 MS. GLYNN LEVIN: I understand, Your Honor.

1 THE COURT: I don't know how legitimate these
2 expenses really are because what I see is a debtor that
3 has absolutely zero existence, zero -- the debtor is
4 nothing. The debtor has -- doesn't have -- I can't tell
5 whether the debtor has the assets. Mr. Stehlik raised an
6 issue about who owns the -- you know, who owns the
7 technology. I don't know what it takes to prove what the
8 debtor owns. The debtor has no employees. The debtor
9 has no office. The debtor has nothing. And so I want to
10 make sure that when we do this worldwide advertising we
11 are not misrepresenting to the world what we have to
12 sell, because the integrity of the bankruptcy process is
13 at stake.

14 MS. GLYNN LEVIN: Clearly, Your Honor, and --

15 THE COURT: So that's -- and then I want to
16 compare apples to apples. In other words, how much did
17 this debtor make in November and December, and how much
18 can the debtor make by selling rigs? If you tell me the
19 minimum price is 2,000 per terra-hash, all right, I've
20 got \$400,000.

21 MS. GLYNN LEVIN: That's right. That's going to
22 be the minimum if all of the terra-hashes are sold.

23 THE COURT: Maybe that's all we get, 400,000.

24 MS. GLYNN LEVIN: Our estimates is that is a
25 really good entry level. That's a floor. But we

1 anticipate that we're going to have purchasers -- more
2 than one purchaser, because as I said, the
3 terra-hashes -- the systems are divided among more than
4 one hosting place, and a -- one purchaser might say, "I
5 want, you know, a given number of terra-hashes, and I
6 want to operate them in -- you know, at, say, these --
7 location in, you know, this place," and so on and so
8 forth.

9 To the extent that we were talking about what can
10 the debtor -- what could the debtor mine if all systems
11 continue to go ahead as is, no changes? I really would
12 like to put Mr. Vessenes on the stand because I can't
13 testify. These are projections that an expert needs to
14 make, and we are --

15 THE COURT: Well, you have the profit and loss
16 statement that you just handed me. You have a budget.
17 But I guess that doesn't have a -- it has 2013 and it has
18 2012. It goes to January '13, right? But if you take
19 out the things that aren't appropriate at all, like
20 \$105,000 in severance pay, that changes. Capital
21 expenditures. Inventory write-offs. I mean, this
22 doesn't sound like the budget that I would expect for a
23 Chapter 11 debtor, I guess. I don't understand the
24 budget, but -- operating expenses.

25 MS. GLYNN LEVIN: I want to address the Court's

1 question, because it's a good one and it's a sensitive
2 one because, as we said, this is really an industry and
3 this is a company that is as transparent as you possibly
4 could get because even its accounts are out there
5 available for the world to see.

6 One of the exhibits that came up in the
7 declaration was a set of records that Bitvestment had
8 created showing transfers and so on. I mean, it's pretty
9 available for most -- for any kind of savvy user to
10 figure out what is mined and what are being held in
11 various accounts. The concern and the sensitivity part
12 has to do with -- is connection with the sale, in that
13 the sale, as we propose, that these rigs will be on an
14 "as is/where is" basis, and there are going to be -- are
15 not -- while we have records as to what mining production
16 has been, we don't want to be making representations as
17 to what mining production will be. In this industry, no
18 one could make such predictions. It's not like you're
19 selling a, like a -- you know, you're selling a -- car
20 sales.

21 THE COURT: Okay. But I understand that. So
22 there are no reps and warranties about how well these
23 machines will do.

24 MS. GLYNN LEVIN: Correct. And in the same way --
25 THE COURT: We just know how much power they have.

1 MS. GLYNN LEVIN: We need to know how much power
2 they have, and any -- we are anticipating that the buyers
3 of -- the prospective buyers are going to have that level
4 of understanding. They will probably be individuals and
5 companies who are already in the bitcoin mining industry
6 and who are already operating, but want to expand their
7 capacity. So that's what we're anticipating. I -- we're
8 not going to be selling to someone who can't decide
9 whether they want to buy a 7-Eleven or a mining rig. I
10 mean, these are going to be people from all over the
11 world who are already in this industry. And it's a
12 finite industry, although it is growing, which is part of
13 the whole premise for how the business model is changing.

14 I'd like to make sure I address the elements of
15 the sale. Really, we have been talking for the last hour
16 or so about whether a sound business reason exists for
17 the proposed transaction. And in the record, between
18 Mr. Vessenes's declaration, supplemental declaration, and
19 Hans Olsen's declaration, the net conclusion that the
20 debtor has come to is that these mining rigs need to be
21 sold.

22 And I want to address the objection because --
23 both the source of the objection and sort of the merits
24 of the objection.

25 Why is it that we have one of many creditors --

1 well, two, but basically one substantial objection of
2 many creditors that is objecting and none of the others
3 are? We have one and why is that? We have a very, very
4 litigious plaintiff in New York, who did not get their --
5 who did not get what they want. They did not get the
6 specific performance, which is what they've been asking
7 for, and that's what's underlying this. They believe,
8 and I will let Counsel speak to that, but my
9 understanding is that Bitvestment believes that it has an
10 inherent right under its contract to specific
11 performance, and if it were -- if it received the rights
12 it was asking for that it felt were its remedy, it would
13 demolish the claims of every other creditor here. Its
14 claim, which has absolutely no support, I might add, is
15 for \$8 million, which is just such a beautiful round
16 number it's sort of hard to believe that it has any
17 legitimacy to it.

18 All of the other claims -- we have a claim for
19 loans, a large one, 3 million, and we have claims in
20 various amounts, some based on the exchange rate of the
21 bitcoins as of November 1st, others I can't really tell.
22 I mean, we just -- we have a -- sort of a range of
23 claims.

24 But if we sort of step back and say: Wait a
25 second. Why is Bitvestment objecting here? I mean, yes,

1 they want the debtor to continue to pump out those
2 bitcoins as much as possible. The part that they do
3 not -- that they are missing or the deceit here is that
4 there is a huge cost to be able to do that, and we have a
5 finite timeline here in that the actual service people,
6 the software engineers who are on their -- on the ground
7 to do this say they're going to stop doing it as of the
8 end of January. So I do want to look at that, these
9 objections in that context.

10 The -- we addressed the sale price, and I think
11 we've been addressing the good faith of the process
12 throughout, and I can address my concerns or my prospects
13 later as to how we would envision an auction.

14 As to the element of reasonable and accurate
15 notice, everyone always complains that notice is too
16 short. I mean, it's sort of the complaint number one.
17 Well, actually, there has been pretty -- this has been
18 pretty good notice considering the rapid pace of this
19 industry. The word of mouth has gone out already. Our
20 pleadings and shortened time was approved on
21 December 24th. Everything went out to all creditors that
22 day. That was three weeks ago. We have a prospective
23 date for an auction bid of January 22nd, so that will be
24 approximately four weeks from the date the service and
25 notice went out. We have --

1 THE COURT: But no advertising has been done yet.

2 MS. GLYNN LEVIN: No. But as I said, we -- there
3 has been a company retained to blasts --

4 THE COURT: Right. But we don't get to go from
5 the original date. We get to go from, you know, today,
6 which is the 10th. So there is basically 12 days between
7 now and when you'd want to have the auction.

8 MR. VESSENES: No.

9 MS. GLYNN LEVIN: So the auction -- let me go back
10 to our dates. From today is the 10th. We would propose
11 to have bids in by noon on the 22nd, deposits for any
12 qualified bidders due on the 24th, and then an auction
13 to -- an auction at 9:00 in the morning on the 27th of
14 January. And I have checked with Mr. Murphy, and he is
15 available on the 27th as well.

16 MR. VESSENES: I have that number, Deirdre. I
17 have our price estimates for the rigs if the judge would
18 like to hear it.

19 MS. GLYNN LEVIN: Okay. Hold on to that.

20 I want to deal with a couple of -- well, deal
21 quickly with the objections of Soule, and then I am going
22 to go to look at Bitvestment's objections. Soule's
23 concerns was what are the assets being sold. I think we
24 are clear on that. There was some concern that there
25 was -- the quote was "an unfamiliar nature of the assets

1 being sold." And I guess familiarity really is in the
2 context of the person who is looking at this, because
3 those who are interested in these assets, this is not
4 unfamiliar at all to them. These are -- even the
5 investors, who are part of the -- who invested in the
6 debtor early on, they're not unfamiliar at all with
7 bitcoin. Everybody understands what bitcoin is.

8 THE COURT: Well, does the proposed order actually
9 describe the assets in detail? I mean, that's what I'm
10 going to be concerned about is what is the order --

11 MS. GLYNN LEVIN: I will ensure that we have an
12 exhibit that describes those assets in detail, yes.

13 We addressed the concern about is \$2,000 per
14 terra-hash the, quote, market value. And, again, you
15 know, market value is sort of an amorphous concept. It
16 is the floor price for an opening bid. It's not
17 necessarily the market value. And I say that in
18 quotation. We do anticipate that bringing in this floor
19 will generate a lot of interest, and the true market
20 value ultimately will be in the bidding process. This is
21 sort of truly capitalism at its best.

22 I want to turn to the objection of Bitvestment. I
23 think I've addressed Soule's concerns. Again, what is
24 Bitvestment? Where does it stand in this case? We don't
25 have any -- we only have one -- well, we have

1 administrative creditors and we have unsecured creditors.
2 Bitvestment is an unsecured creditor, no more, no less.
3 The value of its claim, proof of claim, \$8 million,
4 highly skeptical. The amount, the dollar amount that it
5 invested, I'm going to say this really slowly. \$75,000.
6 That is all it invested, and for all of that \$75,000 it
7 has created all this litigation, all this production, all
8 this objection, and is trying to basically squeeze the
9 debtor into forcing to continue to produce for it so
10 that -- to the jeopardy of the other creditors.

11 Thousands and thousands of pages of 2004 documents
12 were produced. Your Honor said it was onerous. It was
13 onerous. The timeline was onerous. And I really have to
14 add that it's pretty distressing to have taken the time
15 to have put together a 2004 motion so that we could find
16 out what's the basis of Bitvestment's claim. How does it
17 value it? We got a court order under 2004. Immediately
18 they turned around and said, "No. We're asking for
19 reconsideration." Your Honor denied that immediately.
20 We went ahead and said, "Great. There's no
21 reconsideration allowed. We want -- where are our
22 documents under 2004?" They were due under -- on
23 January 6th. We have not received one, and neither
24 counsel is willing to accept service of the subpoena. So
25 I think that might give Your Honor a flavor of the kind

1 of approach here. We're not dealing with a professional
2 approach here. In almost every other case that I've been
3 dealt with Counsel will willingly accept the service of
4 the subpoena.

5 Mr. Gallancy has refused to -- will not come to
6 Seattle for a 2004 exam. He's forcing us to expend the
7 debtor's resources to go to New York to the extent that
8 we -- and we will decide if that's necessary or not, to
9 have him deposed under 2004. But he won't -- no one will
10 accept the subpoena. I think that really does give a
11 flavor of what's gone on.

12 I think the Bitvestment objection, Your Honor,
13 really sort of has two parts. It's got the legitimate
14 parts. It's got the legs where it's really talking about
15 the sale, and I respectfully -- we've dealt with those,
16 but I respect those objections. I respect the fact that
17 they wanted us to continue to mine. I respect the fact
18 that they are looking out for their own client's best
19 interests. I mean, those are legitimate bases for
20 objections. You know, is it being sold? Is it being
21 sold to insiders? And I think we've dealt with them. We
22 don't even have insiders bidding. If they'd like to come
23 and stand and watch the bidding or if they'd like to come
24 bid, they are certainly welcome to do so.

25 The other part of the objection is really kind of

1 more a personal attack, and some of it is legitimate. I
2 can -- I understand their concerns about the
3 transparency. We have done our best to provide them all
4 the financial information that we believe that they're
5 entitled to. We have not held anything back. Some of it
6 was confidential. We wanted to ensure it was kept
7 confidential and not spread around the Internet like
8 trash. This is a court proceeding, and we did want to
9 maintain the integrity of that.

10 As to -- I want to mention also a couple of
11 things. As to the timelines, again, we can't really
12 stress enough that the timeline is really critical here.
13 We wouldn't have been working on the eve of the holidays,
14 Christmas and New Years, and asked Your Honor to deal
15 with this on either of those holidays if the timeline was
16 not critical. Moving this forward apace is in the best
17 interests of the estate. It is the way to maximize the
18 estate. And the debtor is really going to be at a loss
19 to figure out what to do after -- I mean, ultimately it's
20 going to have to turn the keys off if the staff people
21 walk away. It would not --

22 THE COURT: But the debtor could easily mine
23 bitcoin until the end of January and then do just that,
24 turn it off and auction the equipment.

25 MS. GLYNN LEVIN: The concern at that point is

1 we're going to have equipment that is going to have
2 nominal value. We'd be essentially selling it for scrap
3 so --

4 THE COURT: Why?

5 MR. VESSENES: But that's our schedule. The
6 schedule of the judge to --

7 MS. GLYNN LEVIN: Well --

8 MR. VESSENES: It is the schedule.

9 MS. GLYNN LEVIN: Well, it is --

10 MR. VESSENES: To turn it over on Feb 1 to the new
11 owner.

12 MS. GLYNN LEVIN: To sell it -- well, are you
13 proposing that we --

14 THE COURT: I mean, why does it become scrap --

15 MS. GLYNN LEVIN: Are you proposing that we --

16 THE COURT: -- if it stops operating?

17 MS. GLYNN LEVIN: Our schedule is -- well, I want
18 to make sure we're not dealing with semantics here. Our
19 schedule --

20 THE COURT: It is not scrap.

21 MS. GLYNN LEVIN: Our schedule is to allow a new
22 owner to take it over and actually have a sale close
23 exactly as Your Honor has proposed.

24 THE COURT: Okay.

25 MS. GLYNN LEVIN: The end of January. I thought

1 Your Honor was suggesting that we stop this process and
2 start the process of a sale after that time.

3 THE COURT: I guess what I'm suggesting is based
4 upon the way you've described this equipment to me, it
5 doesn't sound like it becomes scrap unless the market
6 completely collapses. That whether you stop today or the
7 end of January or the end of February, you still have a
8 system which can operate.

9 MS. GLYNN LEVIN: Right. And it --

10 THE COURT: In other words, it's not scrap --

11 MS. GLYNN LEVIN: But it's --

12 THE COURT: -- at any time.

13 MS. GLYNN LEVIN: It's a --

14 THE COURT: It's just about the market and whether
15 the cost of that equipment is -- the value of that
16 equipment is going to go up or down. But in other words,
17 it's not like -- well, okay. Let me give you a better
18 example. It is not like a retail store which loses value
19 immensely as soon as it closes.

20 MS. GLYNN LEVIN: Well, as soon as it stops
21 operating --

22 THE COURT: Right.

23 MS. GLYNN LEVIN: -- it does lose value because --

24 THE COURT: Whereas if you stop operating this
25 system, there is no evidence in the record that indicates

1 that somehow it loses all of its value just because the
2 switch is turned off, right? You can still sell it to
3 someone who can turn the switch on.

4 MS. GLYNN LEVIN: The buyers, in my
5 understanding -- and, again, I have to refer to my client
6 because this is a -- such a technical industry. And I
7 have learned as much as I possibly can, but buyers are
8 going to want to be able to walk in and have an operating
9 system in a hosted environment. That is what they are
10 looking for, and to be able to say, "Here is your cold,
11 dark stuff in a warehouse," is not going to generate the
12 kind of sale proceeds that we are looking for.

13 THE COURT: So when they walk in, they're going to
14 want to do business with CoinLab. They're going to want
15 to hire Mr. Vessenes, and they're going to want to hire
16 these other three people because this is the kind of
17 business where you've got to buy it in operating form?

18 MS. GLYNN LEVIN: They --

19 THE COURT: Is that what you're saying?

20 MS. GLYNN LEVIN: I'm not necessarily saying
21 anything about the Human Resources that are going to be
22 attached, no. If a buyer wants --

23 THE COURT: And they're going to need to take over
24 these leases --

25 MS. GLYNN LEVIN: Yes.

1 THE COURT: -- that CoinLab has executed.

2 MS. GLYNN LEVIN: If a buyer wants to negotiate a
3 separate contract to have the individuals who are
4 familiar with the equipment do so, that is up to the
5 buyer and that is up to -- that is not part of our sale.

6 THE COURT: Well, I mean, I want to make sure I
7 understand what you're saying. Because you're either
8 saying this is equipment that cannot be moved and it must
9 be operated where it is located, or it's equipment that
10 you bring in a big truck and you can ship it to Australia
11 if you want. Which is it?

12 MS. GLYNN LEVIN: It may be moved, but "may" is
13 the operative word. The reality is that the buyers will
14 not want to move it. It's highly sensitive. It's very
15 expensive. It needs to be maintained under special
16 conditions. There are already places where it is set up.
17 So it would be like picking up, you know, an auto parts
18 factory. Yeah, you could have it in Seattle or you could
19 have it in Gainesville, Florida, but do you want to? No.
20 You want to have it exactly where it is. You don't want
21 to move --

22 THE COURT: Okay.

23 MS. GLYNN LEVIN: -- the -- you don't necessarily
24 want to move it.

25 MR. VESSENES: It's lost revenue too.

1 MS. GLYNN LEVIN: The cost it would -- the buyer
2 would incur that cost, so it would make no economic sense
3 for a buyer to pick it up and want to move it. Besides,
4 the production of it creates virtual -- a virtual product
5 which can be used anywhere. It's not like it's
6 producing -- you know, pumping out a concrete product
7 that has to then be picked up and shipped and sold. So
8 these buyers, who will be coming in from all over the
9 world, probably don't -- may not care where it is, but
10 are -- probably would be very happy to know that there
11 are existing contracts that they can consider stepping
12 into, and if they're qualified can go ahead and negotiate
13 with those hosting providers to continue to operate the
14 rigs in those locations.

15 And Ms. Pearson can address that a little bit
16 more, as she -- I know she's taken a little bit of time
17 to -- although she's only been recently retained in this
18 case, she's taken a little bit of time to try to
19 understand those leases.

20 Before the hearing today, I provided copies to
21 Mr. Stehlik and counsel for Bitvestment on a proposed
22 appendix, which has -- appendix to the order, which has
23 an outline of sort of sale procedures. And I'm happy to
24 turn to those, but I think maybe it's time to allow my
25 opposing counsel to speak or my cocounsel.

1 THE COURT: Well, let me ask -- I want to ask one
2 more. I have a couple -- I want to make sure I asked all
3 my questions. I guess I don't understand how the mining
4 works such that when the November monthly report was
5 filed on December 17th, it showed no revenue, and it
6 wasn't until the day after Mr. Vessenes's deposition that
7 it was amended to show \$1.8 million.

8 MS. GLYNN LEVIN: Well, the fact that the
9 deposition intervened was really kind of a coincidence.
10 Actually asking to -- asking us to clarify the statement
11 of financial affairs had nothing to do with Bitvestment
12 at all. It had to do with the U.S. trustee, who said,
13 "Can you help us clarify this so" -- and we did, and we
14 amended it. And we amended it, I think, just to --

15 THE COURT: Okay. You missed my question. My
16 question is about bitcoins --

17 MS. GLYNN LEVIN: Yes.

18 THE COURT: -- and how you know when you've
19 actually mined them.

20 MS. GLYNN LEVIN: Yes. So --

21 THE COURT: Okay? So let me finish.

22 MS. GLYNN LEVIN: Yes.

23 THE COURT: On December 17 when this report is
24 filed, you either know or you do not know how many
25 bitcoins have been mined. And I don't know how the

1 process works. Is it a surprise? You don't find out
2 until 30 days later how much you've mined or --

3 MS. GLYNN LEVIN: No. No.

4 THE COURT: -- you can't calculate it?

5 MS. GLYNN LEVIN: No.

6 THE COURT: Well, how do you do it?

7 MS. GLYNN LEVIN: So there really -- there are two
8 questions here. There's no surprise. It's not like
9 opening up your stocking Christmas day and wondering
10 what's in there.

11 THE COURT: But it is an algorithm.

12 MS. GLYNN LEVIN: No.

13 THE COURT: So you don't know exactly when you're
14 going to get one?

15 MS. GLYNN LEVIN: You -- well, yes. In fact,
16 there is some predictability --

17 THE COURT: All right.

18 MS. GLYNN LEVIN: -- in that extent. You know
19 when you've earned it. You don't know when you're going
20 to earn it, but you know -- when you have earned it, it's
21 clear. It's in your account.

22 THE COURT: Okay.

23 MS. GLYNN LEVIN: And I want to make one point
24 because this trumped me a couple of times, and that is
25 the -- these accounts, the deposits in the accounts

1 under -- for bitcoin are timed as of Greenwich Mean Time
2 because this is an international system. So there may
3 have been -- there may be a deposit in the account, let's
4 say, on -- you know, on a Tuesday. Now, Greenwich Mean
5 Time, it's already Wednesday. In Seattle, it may be
6 still Tuesday depending on the time of day.

7 THE COURT: I get all of that, but you filed a
8 monthly report in the middle of December which said, "We
9 earned no income." Zero. Meaning nothing.

10 MR. VESSENES: It's Moss Adams' recommendation.

11 MS. GLYNN LEVIN: So I'll get to that.

12 MS. SIMONYAN: Your Honor, I object to
13 Mr. Vessenes' testifying.

14 MS. GLYNN LEVIN: Okay.

15 THE COURT: Well, he's not testifying. I mean,
16 here's the problem. I am being left with the impression
17 that Mr. Vessenes got caught at his deposition when
18 confronted with these numbers and had to disclose them --

19 MS. GLYNN LEVIN: No.

20 THE COURT: -- that, in fact, the company had
21 earned \$1.8 million. And the debtor needs to do
22 something to dispel that impression.

23 MS. GLYNN LEVIN: No. That really is not the case
24 at all, and I do need to clarify this. And we have
25 counsel for the U.S. trustee here. Why is he here?

1 Because he's been talking to me about these reports.
2 That's one reason. And he and I have had a long -- a
3 fairly long -- at least two discussions, plus I had
4 discussions with Mr. Smith, who actually took the 340 --
5 the 341 meeting. And everybody said, you know,
6 "Interesting industry. How do we account for these
7 bitcoins? What is it?" And I said, "You know, that is
8 right now a little bit of a question, but my client's
9 advice that it has received from Moss Adams is that when
10 it receives bitcoins in accounts that isn't income. It's
11 not income until it's sold." So that has been the --
12 that's been the operating procedure that it's been
13 working from, and we are about --

14 THE COURT: So they got sold, all of these got
15 sold on January --

16 MS. GLYNN LEVIN: Well --

17 THE COURT: -- 8th, the day after Mr. Vessenes got
18 deposed?

19 MS. GLYNN LEVIN: No. No. Let's go back to the
20 amended UST 14. We were operating under this Moss
21 Adams -- well, I won't say directive. We'll call it
22 their opinion that that's how it should operate. And
23 there's been many months, I understand, and maybe even
24 years of discussion as to the accounting principles as to
25 how to account for that. We are about to get Moss Adams'

1 receipt to have them retained as tax counsel to do the
2 income tax returns. So the original US 14, UST 14 that
3 was filed basically presented the facts, the accounting,
4 as we had been -- as the opinion had been given to us by
5 Moss Adams. That is, as of the date that even if you're
6 mining there's -- there aren't any deposits like --
7 because it's bitcoins that are sitting in a bitcoin
8 account, but it's not -- they're not being sold. So
9 after a long discussion with counsel for the
10 U.S. trustee, we decided, well, it's really fair for a
11 number of reasons. It's fair to creditors. It's fair
12 for full disclosure. It's fair for -- well, it's
13 actually also fair for -- in terms of figuring out what
14 the --

15 THE COURT: Well, whether it's fair or not, just
16 tell me what you agreed to do.

17 MS. GLYNN LEVIN: Well, what we agreed to do is
18 right here on -- does Your Honor have the amended UST 14?

19 THE COURT: I do.

20 MS. GLYNN LEVIN: Yes?

21 THE COURT: I do.

22 MS. GLYNN LEVIN: Okay. So on the amended UST 14,
23 the first line -- I mean, it's a simple form with
24 complicated answers. The amended UST 14 says: Deposits
25 from -- deposits are for the month of November. So

1 November 1 through 30, as of November 30 --

2 THE COURT: Now I can't find it.

3 MS. GLYNN LEVIN: Oh. I'll give Your Honor a
4 copy.

5 THE COURT: But it's one page basically, right?

6 MS. GLYNN LEVIN: Deposits for that month --

7 THE COURT: Okay. Right. I have this.

8 MS. GLYNN LEVIN: -- 1,650.061 bitcoin. And I
9 think we dropped off the other smaller digits after the
10 decimal point. At the rate of 1,132. That was a -- it's
11 a complicated averaging weight system, and I will let my
12 client who is the math whiz explain that.

13 THE COURT: I saw it. It's on the Internet. It
14 was 848 when I walked out here. Anywhere between 847 and
15 848 today.

16 MS. GLYNN LEVIN: It fluctuates.

17 THE COURT: Right.

18 MS. GLYNN LEVIN: So having --

19 THE COURT: So this is the --

20 MS. GLYNN LEVIN: So that was the rate --

21 THE COURT: This is the rate as of when the report
22 was filed?

23 MS. GLYNN LEVIN: No. As of the date -- as of
24 December -- as of November 30th. So it's reflecting --

25 THE COURT: Okay.

1 MS. GLYNN LEVIN: -- the November 30th figures,
2 and that's what we were directed to do by the
3 U.S. trustee. So we were coming up with the total
4 deposits of \$1,891,377. That's the dollar equivalent.
5 And then we've already discussed the disbursements and
6 why there were no disbursements that month. There were
7 invoices, but they were not paid in the month of
8 November. So the net cash flow --

9 THE COURT: Well, there weren't exactly zero,
10 because I assume there were still the expenses from the
11 original November report that was filed. The way I was
12 reading this was that you had already -- you had already
13 disclosed the disbursements, and so the receipts were --

14 MS. GLYNN LEVIN: I don't --

15 THE COURT: -- to be substituted there.

16 MS. GLYNN LEVIN: I don't think so. I don't think
17 that that part changed at all.

18 THE COURT: So I should ignore the expenses that
19 were shown for rent, general administrative. You say the
20 \$20,000 officer was -- officer expense wasn't paid. So
21 these expenses were not paid?

22 MS. GLYNN LEVIN: Budgeted but not paid.

23 THE COURT: No. I'm looking at your income --
24 this is the income statement for the original November
25 report, and it shows officer salaries, 20,000.

1 MS. GLYNN LEVIN: Correct.

2 THE COURT: Rent, 3,000. General and
3 administrative, \$43,855. I assumed I had to take those
4 expenses from this number.

5 MS. GLYNN LEVIN: No. There were -- all of the
6 debtor's expenses are -- in some ways it's very simple,
7 because they are all encapsulated in an invoice which is
8 line by line item detailed and for which we do have the
9 backup. Your Honor asked about that back in December.

10 THE COURT: So but --

11 MS. GLYNN LEVIN: Yes.

12 THE COURT: -- total disbursements is not zero.
13 Are you saying it's just because they didn't pay any
14 in --

15 MS. GLYNN LEVIN: They were paid.

16 THE COURT: Okay.

17 MS. GLYNN LEVIN: Those invoices were not paid in
18 the month of November.

19 THE COURT: So I'm sure, then, that Mr. Buford
20 understands that there were \$1.8 million in revenue,
21 potential revenue that hasn't been turned into cash yet,
22 and zero expenses for November.

23 MS. GLYNN LEVIN: But the expenses for November
24 will actually get -- become incurred in December. I
25 mean, November was an odd month. So the end of the month

1 when I think invoices would normally be paid, it was
2 Thanksgiving.

3 THE COURT: All right. I got you.

4 MS. GLYNN LEVIN: And so on and so forth. So that
5 was a concern of Your Honor on --

6 THE COURT: All right. Let me --

7 MS. GLYNN LEVIN: I really want to make --

8 THE COURT: -- make sure -- let me look at just
9 one more. I want to make sure I asked all my questions.

10 Okay. That's it.

11 So why don't we have Mr. Stehlik make his argument
12 first because I think his seems a little simpler to me.

13 MR. STEHLIK: It's probably due to a simple mind,
14 probably, Your Honor.

15 THE COURT: Well, I mean, it seems to me,
16 Mr. Stehlik, and probably to you, that there should be
17 some exhibit attached to the order that describes this
18 property that's for sale in detail, whatever detail it
19 can be described.

20 MR. STEHLIK: Yeah. Just let me make it clear,
21 though. My clients are just interested in maximizing the
22 value of the assets --

23 THE COURT: Right.

24 MR. STEHLIK: -- of this estate, whatever they may
25 be. And so we don't have an ax to grind to that extent,

1 and I really don't think anybody else does that's on the
2 creditors' side of this. The problem really lies in
3 believing what we're told and getting the information
4 that backs up what we're told. And, frankly, this whole
5 thing is kind of a big mess. It's just difficult to
6 understand any of this stuff.

7 And then some of the things that are being said
8 don't make sense to me. Why were there -- why were they
9 asking for investment money in August if they realized
10 that these things were on the way out, rapidly becoming
11 obsolete? Why did they enter into leases in November
12 post-petition if they thought this was all going to go by
13 the wayside; again, immediate obsolescence in two months?
14 Why were they putting rigs into place in December if they
15 thought these were going to be obsolete in a month or two
16 later? I don't understand any of this stuff. It doesn't
17 make fundamental rational sense to me.

18 All of a sudden we are being told after this
19 activity of building up this business that it's going to
20 be obsolete and they have to sell everything. This
21 happened in a very short period of time. Either there
22 was a huge miscalculation to begin with, which raises
23 other issues about responsibility at some of these
24 creditors and my client, or things have changed so
25 dramatically that what made sense two months ago doesn't

1 make any sense anymore, and I don't understand why. It
2 just doesn't make a lot of sense to me, and I really
3 haven't been, I guess, educated sufficiently to
4 understand how that can happen.

5 The people are leaving? Why are they leaving?
6 They just decided that they're going to move to Florida?
7 How do we know this isn't a manufactured crisis now, all
8 of this stuff, to justify resolving a sale that's coming
9 up for assets we don't really understand? I mean, the
10 Court is doing a marvelous job trying to understand it,
11 and I'm trying to understand it, as you are too, but I
12 don't think that creditors and the Court should have to
13 do that much work to figure out the economics of this
14 proposed sale. We're getting information as it's being
15 dribble out or being allowed to be given to us.

16 And I haven't gotten this thing I was supposed
17 to -- I supposedly got. I came up here a little bit
18 early.

19 THE COURT: What thing?

20 MR. STEHLIK: This --

21 THE COURT: The budget?

22 MR. STEHLIK: -- appendix or something or a
23 proposed order.

24 MS. GLYNN LEVIN: Just, I just handed --

25 MR. STEHLIK: Well, I'm in a hearing. I can't

1 read all this stuff today. I'm here to make my arguments
2 and listen to the Court. And, you know, I should have --
3 if this is important to the process, we should have all
4 had it.

5 And we know Mr. Murphy is going to be auctioneer.
6 Well, I found out that today. We know they're going to
7 hire a PR firm. I found that out today. Who is that?
8 What are they going to do? Who is going to pay them?
9 How much are they going to get paid? All this stuff is
10 being done on the fly. And I understand that there are
11 circumstances that may justify quick action and emergency
12 types of proceedings, but it seems to me a lot of this is
13 manufactured and/or being made up as they go along. And
14 I just think that they're asking a lot of the Court and
15 creditors on faith to go along with this as based on what
16 we know so far. I just think there needs to be a little
17 more time and a little more deliberation as to what is
18 going to happen here.

19 And I am concerned that there are significant
20 insider connections that are problematic. The one thing
21 that disturbs me greatly, this CoinLab relationship.
22 When the schedules were filed, the payments in bitcoin
23 were laid out according to the dates of invoices. Well,
24 the statement of financial affairs clearly says the date
25 of the transfer, not the date of the invoices. And now

1 we find out all of this was transferred to CoinLab right
2 before the filing. And that's not an ordinary course
3 payment, and Your Honor put her thumb on that
4 immediately. That's a preference. And who's going to be
5 dealing with all of these things? And this is just one
6 of the few things that I've seen that's disturbing.

7 And, you know, if at the end of the day this is
8 the right thing to do, then we should do it, but how do
9 we know that? I am very suspicious because of some of
10 the things I've seen. I can't really have a lot of faith
11 in what we're being told and what Mr. Vessenes says.
12 There's insider connections. There are insider
13 transfers. There are deals being made. CoinLab has
14 unfettered discretion to charge whatever it wants to this
15 debtor. We haven't seen anything that tells us what
16 they're charging or that that's reasonable. I haven't
17 seen anything. Maybe it's there, but the reports don't
18 seem to suggest really what's there. And it's just
19 somewhat of a grand illusion to me. I just don't see,
20 really, what the reality of the situation is.

21 And, again, I don't want to just be up here
22 saying: Don't sell it, don't sell it, don't sell it. It
23 may very well be the best thing to do, but I don't know
24 how we can tell based upon what we've been told.

25 THE COURT: All right.

1 Ms. Simonyan? Presumably you are the only one who
2 has seen the invoices, or have you seen the invoices?

3 MS. SIMONYAN: We have seen the invoices,
4 Your Honor, but we have only seen the invoices from --
5 that were billed to the debtor. We haven't seen any of
6 the underlying invoices, and that's a significant concern
7 to us and should be to all the other creditors because --
8 and I will get to this in a little more detail. But to
9 answer the Court's question, I would ask that the Court
10 turn to the operations agreement, the post-petition
11 operations agreement, where -- which, by the way, is
12 signed on behalf of both CoinLab and the debtor by
13 Mr. Vessenes giving CoinLab the unbridled power to bill
14 whatever it finds appropriate. So, yes, there are some
15 invoices that have been generated and have been produced,
16 but we don't know the basis of these invoices, so unless
17 we do further discovery -- and I understand that during
18 the hearing for the motion to compel the Court had some
19 procedural constraints as to what was allowed to be
20 produced.

21 THE COURT: Right.

22 MS. SIMONYAN: However, the Court also noted
23 that -- the debtor's continued efforts to hide behind
24 CoinLab to produce information that is critical for the
25 administration of this case and for the relief that it

1 seeks.

2 Your Honor, this is a profitable debtor. There's
3 no question about it. We're not making this up. The
4 information we've gathered is from the record established
5 in this case by the debtor. Now, they have been not very
6 forthcoming with the production of information, to say
7 the least; however, what has been produced and what we
8 have been able to review shows a highly profitable
9 company.

10 So let's address the timing of this sale that the
11 debtor has proposed. You know, there was a lot of
12 beating around the bush about the price that will be
13 generated if we move forward with the sale auction
14 pursuant to the procedures that are before the Court
15 right now. Like Mr. Stehlik, I haven't had a chance --
16 the new procedures motion or order was handed to me
17 moments before the hearing, so --

18 THE COURT: Okay. But I got the impression from
19 Ms. Glynn Levin that it's just -- it just shows a chart
20 about what the procedures are. Does it have substantive
21 changes from what was in the motion? I mean, some of it
22 had to change based upon the date that I set, right?

23 MS. GLYNN LEVIN: The date. Some of the dates
24 changed, and I articulated to what those were. The
25 January 22nd to be the deadline for bids, the 24th for

1 deadline for deposits, and 27th for an auction. I
2 mean --

3 THE COURT: Well, but they make it sound like
4 whatever you gave them today is completely different than
5 what the proposed order was before.

6 MS. GLYNN LEVIN: It --

7 THE COURT: Is that --

8 MS. GLYNN LEVIN: It's not. I mean, we could do
9 literally a line-by-line comparison. It's not.

10 THE COURT: All right. Well, I --

11 MS. GLYNN LEVIN: What we --

12 THE COURT: I don't want to do a line-by-line --

13 MS. SIMONYAN: Your Honor --

14 MS. GLYNN LEVIN: What we've added was something
15 to explain what directive, what procedures would be given
16 to an auctioneer.

17 THE COURT: Oh, okay. Well, do I --

18 MS. GLYNN LEVIN: This was specifically --

19 THE COURT: -- actually have -- that order hasn't
20 been filed, right, so I don't have it.

21 MS. GLYNN LEVIN: No. No. And this --

22 THE COURT: All right.

23 MS. GLYNN LEVIN: This is proposed, and we wanted
24 to make -- I mean, this is to respond to the objection.

25 THE COURT: Okay. Well, let me --

1 MS. GLYNN LEVIN: We wanted to make sure the
2 process is fair.

3 THE COURT: -- have Ms. Simonyan go on, then.

4 MS. SIMONYAN: Your Honor, like, we don't know
5 what we don't know. It was handed to us. I was under
6 the impression that it actually addresses some of the
7 concerns that were raised to the procedures of this
8 auction. If it doesn't address those concerns, then I
9 think that's even worse for the debtor; however, that's
10 irrelevant. The point that I was making is that we --
11 according to the debtor's schedules and the reports that
12 they have filed, the projections they have made,
13 everything points to a highly profitable company. Now,
14 the timing of the sale, they want to do this on an
15 extremely expedited basis, but it's very clear that there
16 is no need for such an expedited sale because every day
17 that these rigs are not sold the company is bringing in
18 value into the estate like it should.

19 THE COURT: Okay. But without seeing the
20 expenses, the way they teed it up, if all the expenses
21 hit in December, and I don't know when that report is
22 due, then we determine whether they're profitable and we
23 have to get behind whether the expenses are legitimate,
24 right? I mean, how can -- you're saying they were
25 profitable because now what they have is a November

1 report that says \$1.8 million in revenue and zero
2 expenses. I agree with you. I'd rather go with that
3 every month than pretty much anything else.

4 MS. SIMONYAN: Well, Your Honor, the testimony and
5 the record that the debtor produces changes so often it's
6 actually really hard to keep up with what the actual
7 revenue and what the actual expenses of the company are.
8 At the time that we were filing our response, and at the
9 time -- you know, at every stage of this case when we
10 investigate the financial condition of the company, yes,
11 it's a little different, but all the information gathered
12 together still points to a profitable company. And I'm
13 looking for this information. I'm relying on the
14 testimony of Mr. Vessenes at the Rule 2004 exam. I'm
15 relying on their Schedules I and J that are on the
16 record. I'm relying on their monthly financial reports.

17 And, Your Honor, I understand that these reports
18 keep changing to whatever is convenient for the debtor at
19 the time. So, for example, one moment we hear that there
20 are some operating expenses that include severance pays
21 and payments to the officers of the company and some
22 other invoices, and when they're -- when it's pointed out
23 to the debtor that these are in violation of the
24 bankruptcy code and should have been done pursuant to a
25 court order, then it turns out that none of these

1 payments are actually made. So when it's necessary to
2 show that the company does not -- is not profitable, all
3 the operating expenses are listed. When it's convenient
4 that the debtor not have made these payments, then these
5 payments have not been paid. So --

6 THE COURT: Well, let's go -- so what you're
7 saying is if we go to his deposition testimony we're
8 going to see that he said -- that he said -- that these
9 payments had been made.

10 MS. SIMONYAN: What we are going to -- that the
11 payments? No, I'm not saying that, Your Honor. What
12 I'm --

13 THE COURT: No. The incentive compensation. Are
14 you saying that he said that this money had actually been
15 paid?

16 MS. SIMONYAN: He said that -- during the
17 Rule 2004 examination, Mr. Vessenes said that some of the
18 incentive compensation was made and it was justified
19 because the company needed to continue operating, and
20 although it was an exorbitant amount it was still better
21 than having the rigs shut down. This was his testimony.

22 And, Your Honor, it's actually a little difficult
23 for me to represent Mr. Vessenes's testimony here because
24 all the answers -- almost all the answers that we
25 received were in the -- were prefaced by "I don't know."

1 "I'm not sure." "I have to talk to my accountant." "I
2 don't know." "I'm not sure what these transfers are."
3 "I don't know exactly how many addresses the debtor
4 utilizes." All of this information were conjectures,
5 leaving the door open for the debtor to come back at a
6 later date and again change the testimony to match
7 whatever is convenient for --

8 THE COURT: Okay. Well, I see what you're talking
9 about, but here it says -- finally, at the end of all
10 this questioning -- I'm on page -- I can't tell which
11 page this is, but it says --

12 The question: "So you paid them a retention bonus
13 on top of their salaries, and now they're going to get
14 another retention bonus?"

15 "Yes." Answer: "Yes. They wanted some to stay
16 to the end of the year and more to the stay -- more to
17 stay to the end of January."

18 So I guess from that --

19 And then it says: "I understand that. But you
20 are now paid \$355,000 for three people for two months of
21 retention bonuses or planning to pay?"

22 Answer: "Yes. In my judgment, that's much better
23 than having them leave tomorrow and all the rigs turning
24 off since that's just six or seven days of downtime."

25 So I'm like you. When I read that, I read that to

1 say that the debtor has paid \$355,000 to three people for
2 two months of retention bonuses. So that's kind of, I
3 guess, where I'm coming from.

4 MS. SIMONYAN: And the testimony -- my
5 understanding walking out of the Rule 2004 exam was that
6 some of it was paid and some of it was to be paid. Like
7 I said, we weren't getting clear answers to our
8 questions, but Your Honor has the transcript before it.
9 It's on the record.

10 So we are -- there is some level of speculating we
11 have to do, because even though we did have Mr. Vessenes
12 at the Rule 2004 exam he was not able to answer with
13 certainty a lot of the questions that were asked, a lot
14 of some basic questions. Payments that were paid in very
15 large amounts, not very recently, he was not able to
16 remember, and he had to -- and he resorted to his
17 accountant making the payment, effectuating the payment,
18 and preparing the bankruptcy schedules.

19 But what we do know, Your Honor, with certainty is
20 that the debtor continues to mine bitcoins, bitcoins have
21 high value. As of today, I believe, as I was walking out
22 of the office, they were at about 8- -- between 820 to
23 850 per bitcoin. As of today, just in January the debtor
24 has probably mined approximately \$600,000 worth of
25 bitcoins.

1 THE COURT: Why do you say probably?

2 MS. SIMONYAN: Well, because the debtor could not
3 tell us with certainty exactly how many bitcoins it
4 mines. It said -- because the debtor testified that --
5 Mr. Vessenes testified that the debtor mines between 65
6 to 75 bitcoins per day. So he wasn't able to tell us
7 with certainty exactly how many bitcoins the debtor had
8 mined in November, how many it had mined in December, how
9 many it had mined as of the date of the Rule 2004 exam.
10 So I do have to say "probably" because we are relying to
11 some extent on the testimony of Mr. Vessenes.

12 But so the point is, Your Honor, that every day
13 that we wait and these assets are not sold, more value is
14 coming into the estate. Based on the projections and the
15 testimony of Mr. Vessenes regarding the operating
16 expenses of the company and looking at the history of the
17 operating expenses of the company, it appears that even
18 if we just wait one extra week we're going to generate
19 more value for the estate than if the rigs are sold
20 today. If we wait just one extra week, there will be
21 more value in the estate even if we have to completely
22 abandon the rigs at the end of the week than if we were
23 to sell the rigs today.

24 Again, there was some -- a lot of back and forth.
25 The Court wanted a simple answer to a simple question of

1 what is the proposed minimum bid amount, and the
2 answer -- and I don't know why it was so difficult to
3 answer because this was in Mr. Vessenes's testimony at
4 the 2004. It's on the record in the form of
5 Mr. Vessenes's declaration in support of the sale motion.
6 The answer is very simple. It's \$400,000. So just in
7 one week the debtor is able to produce more value, more
8 dollar value than it proposes to sell the rigs.

9 Second of all, it's important to note that
10 throughout this whole proceeding the debtor has made --
11 has misled the Court by trying to shift the focus from
12 the fact that it is able to generate extraordinary value
13 to the fact that it's become a little more difficult --
14 increasingly difficult to mine bitcoins. That is
15 intuitively true. It's obvious. Yes, the bitcoins are
16 worth more so there's more competition. There are more
17 people who want to earn some bitcoins and do mining
18 operations. That's no secret. But what the debtor
19 repeatedly avoids producing is the fact that these
20 bitcoins just in one year since the debtor -- just in one
21 year have increased in value 80 times, and that's the
22 true test of the profitability of this company. We have
23 this incredibly successful, uniquely positioned
24 enterprise that is able to produce this product. While
25 it's operating expenses can be paid -- are in dollar

1 amounts, it's able to continue to produce a product that
2 it can sell 80 times the price of the product a year --
3 only a year ago.

4 So, Your Honor, it's very simple. This is a
5 highly profitable enterprise. It doesn't need this
6 bankruptcy. It has no business filing a bankruptcy
7 petition, and the sale motion that is a big piece of this
8 puzzle should be denied.

9 I really don't have too much to add to the flaws
10 in the procedures that the debtor has proposed for the
11 sale of these assets. You know, it's -- what's important
12 to note is that they clearly favor an insider purchase.
13 You know, again, we can't rely on what's in the -- it's
14 in the revised order that was handed to us moments ago.
15 We must look at what was sent out to creditors, what's
16 before the Court, and what's before the Court is -- are
17 procedures that clearly favor only an insider purchasing,
18 and it's evidenced by the fact that the debtor has set an
19 extremely short time frame of five days between the time
20 that the Court enters the order approving the procedures
21 and the deadline to submit the bids. And within those
22 five days, those five days the debtor finds sufficient to
23 do marketing, to solicit bids, to have the credit -- to
24 have any potential purchasers do due diligence, get the
25 information necessary to determine what the bids should

1 be, to -- and to formulate and submit their bids after
2 having understood the true value of the assets.

3 Your Honor, the absurdity of the time frame that the
4 debtor had initially proposed is evident on its face, and
5 it exposes clearly the debtor's intent to sell the mining
6 rigs to the -- to an insider and shed all these
7 contractual responsibilities that it has to its
8 creditors.

9 Some of the other concerns are that there are no
10 clear procedures for any due diligence to be conducted by
11 any potential purchasers.

12 THE COURT: I'm not sure we know -- we even know
13 what the due diligence would be. I assume somebody has
14 to look at the equipment or know exactly what its
15 components are so that they can verify its terra-hashing
16 capabilities.

17 MS. SIMONYAN: It's terra-hashing capabilities.
18 Whether they work properly. And these are uniquely
19 engineered rigs, Your Honor. I don't know exactly the --
20 all the technical details of the due diligence that would
21 be required to make an informed decision about the
22 purchase; however, there is no question that there needs
23 to be some extensive due diligence to understand the
24 mechanism in which they operate, to understand their true
25 value and their -- to understand their revenue-producing

1 capacity.

2 The debtor has testified that it has made no
3 marketing efforts to date. In fact, the debtor testified
4 at the Rule 2004 exam that the only party that it could
5 identify that had expressed any interest to purchase the
6 assets was an insider, Mr. Joel Yarmon. So up until
7 today, the only parties that have been consulted about
8 the sale of these mining rigs were only insiders. Well,
9 I shouldn't say as -- I should say as of the date of the
10 Rule 2004 exam.

11 So the procedures, Your Honor, are extremely
12 flawed, and for that reason alone this -- the motion
13 should be denied.

14 But I next want to turn to what was extensively
15 discussed moments ago, and that's whether or not the
16 debtor may be trusted to make sound business decisions in
17 the best interests of the estate and its creditors, and
18 the debtor's conduct up to this date demonstrate that the
19 answer is absolutely no. We have a monthly operating
20 report that shows that no bitcoins were mined, that there
21 was no bitcoin value --

22 THE COURT: So you don't buy the Moss Adams
23 opinion?

24 MS. SIMONYAN: Your Honor, the Moss -- absolutely
25 not. The Moss Adams opinion is completely irrelevant

1 here. We have a monthly operating report that requires
2 the debtor to show what -- to show its assets. If the
3 debtor is saying that it cannot disclose the mined
4 bitcoins in the form of revenue because it has to be as
5 of the date that the bitcoins are sold, if that, in fact,
6 is the Moss Adams advice, then that value needs to be
7 disclosed elsewhere on the report. It needs to be
8 disclosed either as assets, inventory. You can't just
9 ignore on a balance sheet --

10 THE COURT: Well, there is some inventory listed
11 on here. It says "Accounts Receivable, Net Bitcoins." I
12 don't know what that is.

13 MR. VESSENES: There's an explanation on the
14 second page, Your Honor.

15 MS. SIMONYAN: I can explain, Your Honor. The
16 explanation is that because there was no specific line
17 item for bitcoins they have inserted it in accounts
18 receivable, and they value --

19 THE COURT: So that would be given, wouldn't it?

20 MS. SIMONYAN: Yes, except it's valued at \$129,000
21 when the true value is, in fact, 1.8 million.

22 THE COURT: Well, I see what you're saying. Okay.

23 MS. SIMONYAN: And we went -- at the Rule 2004
24 exam, we actually explored the monthly operating report
25 quite in detail. We spent a lot of time on it going line

1 item by line item, and, not surprisingly, the monthly
2 operating report was amended the next day to show what
3 the actual revenue for the company was in the form of
4 bitcoins.

5 THE COURT: So just so I'm clear, if I multiplied
6 129,168 by \$848, I get about a million -- 4,085,000 --
7 no, that's not right. So there's no scenario under which
8 that's the number of bitcoins?

9 MS. SIMONYAN: Oh, no. The number --

10 THE COURT: Yeah. There's no way.

11 MS. SIMONYAN: -- of bitcoins that it's --

12 MS. GLYNN LEVIN: Right.

13 MS. SIMONYAN: There's no way that --

14 THE COURT: Right. There's no way.

15 MS. SIMONYAN: No mathematical formula --

16 THE COURT: That had to be a dollar valuation
17 inserted into that line item?

18 MS. SIMONYAN: Yes. Absolutely.

19 THE COURT: Okay.

20 MS. SIMONYAN: And the debtor has actually
21 testified to that. But if Your Honor turns to the
22 amended report, the actual number of bitcoins that were
23 mined was 1,650.061, and at a rate -- at the rate as of
24 that date of \$1,132 per bitcoin, it would render
25 \$1.89 million, approximately.

1 But, Your Honor, that's only one example of the
2 multiple lies that have been put in front of this court
3 and have been produced in this case. We have an
4 operations agreement that was entered post-petition, as I
5 said, giving CoinLab the unbridled power to bill
6 Alydian -- to bill the debtor whatever it found
7 appropriate, and the debtor has adamantly refused to
8 produce any underlying invoices to -- as evidence that
9 there was no bad faith and the actual expenses were
10 accurate and reasonable.

11 There were payments to insiders two days before,
12 and as of the date -- only a couple of hours before the
13 bankruptcy petition was filed, the debtor transferred as
14 of today's value over \$12 million worth of bitcoins. The
15 debtor repeatedly lied about it in his schedules, on
16 Schedule 3B at the 341 meeting of creditors, and only
17 amended SOFA No. 3 the day after the Rule 2004 exam,
18 during which time it was confronted with evidence that
19 these payments were actually made immediately before the
20 bankruptcy petition. We have multiple other
21 misstatements in the schedules, including Schedule D,
22 which states that the debtor had no bitcoins as of the
23 date of the filing of the petition.

24 And we have continued discovery violations that
25 are still ongoing in this case, Your Honor, and that's

1 what I would like to turn to next.

2 Oh, and before I move on, I want to answer a
3 couple of questions that the Court asked earlier, and I
4 don't believe the questions were adequately answered.

5 So one of the questions was whether the debtor is
6 immediately notified of the amount of bitcoins that its
7 mined and how many bitcoins that it has, and the answer
8 is, yes, it almost immediately knows. Once the bitcoins
9 are mined, they are in an Alydian address. They appear
10 in an Alydian address that are used for mining bitcoins,
11 so there is no chance that the debtor at the time of
12 filing the monthly operating -- the original monthly
13 operating report could have miscalculated the value of
14 bitcoins it had.

15 And now, turning to the discovery violations,
16 Your Honor, I want to go back to the hearing on the
17 motion to compel, which was actually a quite extensive
18 hearing, and a lot of -- my client has spent a lot of
19 time on these discovery motions and a lot of attorneys'
20 fees on discovery motions and the Court spent almost a
21 full day entering the order. And the debtor was
22 specifically required to produce all of the bitcoin
23 addresses that it had -- it used or had previously used
24 to mine, transfer, hold, control bitcoins. The Court set
25 a specific deadline for that production of 24 hours,

1 given that that was a key piece in the puzzle of
2 determining what the transfers of bitcoins out of the
3 estate were. The deadline was set at 24 hours, and
4 within the 24 hours, after some struggle, I might add,
5 we -- the debtor produced a 20-page -- 27-page document
6 which is subject to a confidentiality agreement. So I
7 haven't printed that document, but I would like to -- I
8 have a copy with me, and I'd like to pass it to the
9 Court, if I may.

10 THE COURT: All right. I'm sure I don't want to
11 keep it, but I'll look at it.

12 MS. SIMONYAN: Your Honor, this --

13 THE COURT: Yeah. It's worthless.

14 MS. SIMONYAN: Not only is it worthless --

15 THE COURT: Okay. But this watermark --

16 MS. GLYNN LEVIN: That's not the form. It's been
17 photocopied in a way --

18 THE COURT: Well, that's what I was about to
19 ask --

20 MS. GLYNN LEVIN: That is not the way we had it.

21 THE COURT: Let me ask the question. I mean, this
22 happens with a watermark when it's photographed. So the
23 question is, did you receive one with a watermark through
24 which you could see?

25 MS. SIMONYAN: I received one through a watermark

1 through which I can see, but the content of this
2 information is so highly technical that I am not the one
3 that analyzes the data. I need some people with the
4 technical knowledge to analyze the data and --

5 THE COURT: So your client doesn't have that
6 knowledge? Mr. Gallancy can't look at this and know
7 whether these are, in fact, addresses?

8 MS. SIMONYAN: Well, so there -- the answer to
9 that is twofold, Your Honor.

10 THE COURT: Okay. Ms. Glynn Levin, I can tell
11 you, because I sit up here, that Ms. Simonyan didn't make
12 any noises or anything like that when she heard you say
13 things that she didn't like, so you need to give her the
14 same respect.

15 So you're telling me your client can't read this?

16 MS. SIMONYAN: What my client can read is in the
17 version that Your Honor has in front of her at the
18 moment. He can read with the darkened watermark, and he
19 can only make out some of the information that is on
20 there that is not obscured by the watermark. That's --

21 THE COURT: Okay. But why can't you give your
22 client the one that doesn't obscure --

23 MS. SIMONYAN: The original?

24 THE COURT: Yeah. That isn't obscured by the
25 watermark.

1 MS. SIMONYAN: Because my client is in New York,
2 Your Honor, so that would require me to take the only
3 original copy and forward it to my client and have no
4 other copies. And, Your Honor, I want to remind the
5 Court of the importance of the time frame in which they
6 were supposed to produce these documents.

7 THE COURT: Right.

8 MS. SIMONYAN: We needed to this information going
9 into the Rule 2004 examination. But, you know, the
10 watermark is simply indicative --

11 THE COURT: But I could just order the debtor to
12 provide you with a copy that does not have a watermark on
13 it and instead on the first page says all of these pages
14 are confidential, and that's it. No watermark. Just
15 something on the first page.

16 MS. SIMONYAN: Exactly, Your Honor.

17 THE COURT: Okay.

18 MS. SIMONYAN: And we would ask that the Court
19 make that order. However, this shows the -- this is only
20 indicative of what the debtors have produced and how
21 forthcoming they have been with the production that were
22 subject to several court orders.

23 In addition to watermark which is absolutely
24 unnecessary, Your Honor, the production does not contain
25 a single full bitcoin address. The -- Mr. -- I have

1 attached the excerpt from the Rule 2004 exam where
2 Mr. Vessenes testifies that the 27-page production does
3 not contain a single full bitcoin address. All it
4 contains are short form addresses that are listed at the
5 top of the document, and there are only five of those,
6 and we know now that the debtor has at least six bitcoin
7 addresses. Again, to this date the only testimony that
8 we have -- we still don't know with certainty how many
9 addresses the debtor has. Mr. Vessenes came to the
10 Rule 2004 exam and testified that there are probably six,
11 but "probably" is not good enough. We should have had
12 that information with certainty. If there are six
13 addresses, those six addresses should have been typed
14 into an email and forwarded to us in response to the
15 court order, something that could have been done within
16 five minutes.

17 But this is not the end of the story, Your Honor.
18 We notified -- instead of filing a motion for sanctions
19 or another motion to compel, we notified debtor's counsel
20 that they had entirely failed to respond to our
21 production request, and we asked that debtor's counsel
22 produce the actual addresses that were used that would be
23 responsive to our request. And in response, we get a
24 thousand-page document that contains -- over a
25 thousand-page document, that contains probably over

1 100,000 addresses, also covered with a watermark. If I
2 may, even even a more obnoxious watermark. If I may pass
3 that to the Court. And this, Your Honor, constitutes
4 only probably one-tenth of what was produced to us in
5 response to the -- to our RFP No. 1. And when we
6 actually were able to verify these addresses, we
7 discovered that most of these addresses are addresses
8 that were generated by the debtor but were never used.
9 So, again, Your Honor, we are buried -- the debtor buried
10 us in response to the court order compelling discovery.
11 Four days later, buried us with a production consisting
12 of 1,200 pages and over 100,000 addresses that were
13 completely useless.

14 That was the evening before the Rule 2004 exam,
15 and at the Rule 2004 exam Mr. Vessenes came unprepared to
16 even answer with certainty the very simple question, "How
17 many addresses has the debtor used to mine bitcoins?"
18 Mr. Vessenes testified that there are probably six, and
19 if that's the case, well, then that clearly indicates the
20 bad faith in which they have complied with any discovery
21 requests.

22 And one final item with regard to discovery,
23 Your Honor. We had asked the debtor to produce some
24 emails and some correspondence that accompany some of
25 our -- some of the agreements that were entered pre- and

1 post-petition by the debtor, and I want to give the Court
2 a little glimpse of what was produced there.

3 THE COURT: Morgan you can give these back.

4 MS. GLYNN LEVIN: I'm sorry. What is this? Are
5 there Bates stamps?

6 MS. SIMONYAN: This is the production that was
7 made to us on January 6th, in the evening of January 6th,
8 the day before the Rule 2004 exam was scheduled. And so
9 let me just explain to the Court -- and, you know, we
10 didn't have, obviously, the opportunity to review this as
11 of -- before the Rule 2004 exam, and it appears -- it's
12 hard to read, but it appears that from what we can tell
13 there is some important information that needs to be
14 explored further. But let me tell the Court some of the
15 problems there are -- that there are with this discovery.

16 First of all, as the Court can see, many of these
17 emails are gibberish. There are characters that are
18 completely unreadable. Some of the font sizes are so
19 small that it's impossible to even read the parts that
20 are in actual English. Most importantly, these emails
21 are not produced in their original format, and we are
22 entitled to see the emails in their original format
23 because we need to be able to analyze the metadata of the
24 emails and to ensure that the content of the emails and
25 the various information accompanying the emails has not

1 been altered. There are no attachments to the emails
2 that were included, and there were -- some of the emails
3 were produced in sideways so the watermark that's on them
4 actually obscured them even more than it would otherwise.
5 And the production contains numerous duplicates, so we
6 had to go through approximately 300 pages of the same
7 five emails, Your Honor.

8 These are some of the problems with the production
9 that we've dealt with. And, you know, I would ask that
10 the Court today make a ruling requiring the debtors to
11 produce this information without the watermark or putting
12 some sort of a confidentiality notice somewhere at the
13 top of the document, which would be perfectly sufficient
14 under the circumstances. But we know what's covered
15 under the confidentiality agreement. We have no
16 intention to violate the confidentiality agreement --
17 which, by the way, Your Honor, this confidentiality issue
18 is also -- was another excuse to delay production of
19 documents because all the bitcoin addresses, that's
20 public information. People can go on publicly available
21 websites and see all the bitcoin addresses that are out
22 there that are transaction --

23 THE COURT: But can you tell when you go out there
24 and look who they belong to?

25 MS. SIMONYAN: You can't tell who they belong to,

1 but the point is that --

2 THE COURT: So then it's not public information.

3 MS. SIMONYAN: The actual addresses are public
4 information. It's not public information who they belong
5 to, but the point is that there is no intellectual
6 property that needs to be protected to this
7 confidentiality agreement, although I --

8 THE COURT: Well, if somebody knew your bitcoin
9 addresses, could they hack into that account?

10 MS. SIMONYAN: There is absolute -- there have
11 been no incidents of hacking into Alydian addresses.
12 There's nothing on the record to indicate one way or
13 another, and --

14 THE COURT: Okay.

15 MS. SIMONYAN: -- this concern was never raised
16 with us. Just at some point, in order to delay
17 production -- for the apparent reason of delaying
18 production, the debtor raised the confidentiality issue.

19 So, Your Honor, I think I've gone through most of
20 the arguments as to why the motion today should be
21 dismissed. There were some issues raised about
22 Bitvestment's good faith in this case that I would like
23 to address before I sit down.

24 So, first of all, debtor's counsel calls for the
25 Court to reprimand Bitvestment for taking upon itself the

1 labor of ensuring that the debtor has complied with the
2 bankruptcy code; has not looted the estate; has disclosed
3 the insider transfers prepetition, post-petition; has
4 disclosed the various agreements it has entered into; has
5 disclosed that it has unilaterally decided to award
6 Mr. Vessenes a \$20,000 monthly salary that, by the way,
7 started only post-petition; and basically taken upon
8 itself the labor and the cost of ensuring that the
9 integrity of the bankruptcy process is preserved.

10 Second of all, Bitvestment -- it's completely
11 irrelevant how many creditors are objecting to the sale
12 motion and to the various other reliefs that have been
13 submitted to this -- have been requested. However, it
14 must be noted that Bitvestment is a uniquely positioned
15 creditor in this case. Its contract has a provision that
16 is significantly different from the -- all the other
17 presale contracts of all the other creditors, and the key
18 difference is that Bitvestment's contract does not
19 contain a provision which says that upon a certain date
20 the contract expires. So all the other contracts expire
21 on a certain date, mostly around December of 2013. These
22 contracts state that upon a certain date if the debtor
23 has not submitted the -- to the creditors the bitcoins
24 that it's required to submit under the contract the
25 contract expires and these creditors are entitled to a

1 refund of their original investment. So these contracts
2 expire at some point, and the debtor has an option to
3 repay those contracts in dollar value. Bitvestment
4 contract does not have that provision, making Bitvestment
5 a unique creditor in this case.

6 And, finally, I need to address the subpoena
7 issue, Your Honor.

8 THE COURT: Their subpoena to your client?

9 MS. SIMONYAN: Subpoena to my client.

10 There have been allegations made that we have not
11 complied with the subpoena. Well, it's a little
12 difficult to comply with a subpoena that has never been
13 served. My client has not given me express authority to
14 accept service on his behalf. My firm has a very strict
15 policy to comply with the client's permission whether or
16 not to accept service. It's my understanding that
17 Mr. Reyhani, who is Mr. -- who is Bitvestment's counsel
18 in New York, is also admitted here pro hac vice, he also
19 does not have the authority to accept service. However,
20 Your Honor, this is a very simple -- there's a very
21 simple solution to this purported problem. All the
22 debtor needs to do is serve the registered agent, which
23 is publicly available information. I don't understand
24 how this creates any difficulty or demonstrate any sort
25 of bad faith upon Bitvestment.

1 Oh, and one more thing I want to address,
2 Your Honor. The debtor has repeatedly stated that the
3 debtor's core team is unwilling to stay after a certain
4 day. The testimony that's been submitted is highly
5 dubious. It only comes from Mr. Vessenes, and in very
6 ambiguous terms, if I may add. Mr. Vessenes testified
7 that they may or they likely will not stay. Again, we
8 see no certainty. At the Rule 2004 exam, it was
9 discovered that this team will stay on only if they're
10 paid a retention bonus of \$250,000. Upon further
11 exploration, it was discovered that the team had already
12 received a large sum only a month ago, and that is on top
13 of their \$200,000 monthly salary. These are --

14 THE COURT: 200,000 -- you mean total?

15 MS. SIMONYAN: No, not --

16 THE COURT: Not just for one person.

17 MS. SIMONYAN: No, each. Each. Each person has a
18 \$200,000 monthly salary.

19 THE COURT: Monthly salary?

20 MS. SIMONYAN: I'm sorry.

21 MS. GLYNN LEVIN: What?

22 MS. SIMONYAN: I'm sorry. Yearly salary.

23 THE COURT: Okay.

24 MS. SIMONYAN: I'm sorry. I made -- it was my
25 mistake. They have a \$200,000 yearly salary. They got a

1 retention bonus of -- or at least they were promised --
2 it's possible that it was never delivered. We still
3 don't know after the debtor has been questioned so many
4 times, but it's been represented in the debtor's reports
5 that \$105,000 at least, as of today, has been paid. And
6 these people -- Mr. Vessenes was unable to testify
7 whether these people have other jobs, whether they have
8 other commitments or whether they've just threatened to
9 leave and just sit at home and collect Unemployment. So,
10 Your Honor, the contention that the debtor is unable to
11 operate after a certain day because its team is -- has
12 expressed unwillingness to stay on under very favorable
13 circumstances and having received some significant sums,
14 it's incredulous. And also, Mr. Vessenes has made no
15 showing that his team is -- cannot be easily replaced.

16 That's all for now, Your Honor, if the Court has
17 no more questions.

18 THE COURT: I don't.

19 So, Ms. Glynn Levin, do you want to respond? I'll
20 just give you an opportunity to briefly respond.

21 MS. PEARSON: Your Honor, can I be heard briefly?

22 THE COURT: Oh, okay, Ms. Pearson. Go ahead.

23 MS. PEARSON: Jane Pearson for CoinLab.

24 I just wanted to make a couple of broad points,
25 and one of them is, you know, the thing that strikes

1 me -- I'm new to the case, but is that if the company is
2 so highly profitable, I mean, certainly CoinLab would be
3 interested as the majority shareholder in the continued
4 operations of the company. So I think that the action of
5 being supportive of the auction demonstrates the
6 fundamental conviction that the company cannot -- if it
7 is profitable now, and I'm not -- I don't think that's
8 been established, but that it's not anticipated because
9 of the market forces that are at work --

10 THE COURT: So let's talk --

11 MS. PEARSON: -- that it will continue to be
12 profitable.

13 THE COURT: -- about, though, who you think -- who
14 else from CoinLab would have had authority to sign this
15 post-petition operations agreement. Because so far I've
16 only seen one person associated with CoinLab, and that's
17 Mr. Vessenes. So I think these companies do whatever he
18 wants to do, so how can I find -- I guess what I'm asking
19 you, and you're new, but I mean, how do I find any
20 separate existence at all so far with regard to
21 CoinLab --

22 MS. PEARSON: Well, I --

23 THE COURT: -- from the debtor?

24 MS. PEARSON: Your Honor, I think, you know,
25 common management doesn't necessarily mean that there

1 isn't separate existence.

2 THE COURT: So I asked you, who else in the
3 company, then, in CoinLab would have the authority to
4 sign this contract?

5 MS. PEARSON: I believe that the general -- well,
6 the general counsel, Ms. Wallace, would have authority to
7 sign a contract. A CFO would have authority to sign a
8 contract. I'm not sure who the current CFO is. Those
9 are people that strike me as having that kind of
10 authority.

11 THE COURT: So hopefully they know about this.

12 MS. PEARSON: Well, I think they --

13 THE COURT: Or participated in some way.

14 MS. PEARSON: Well, I'm not sure when Ms. Wallace
15 came on board. I don't know if she participated with
16 respect to that contract. I'm not sure who was on board,
17 if there was a CFO on board at that time.

18 But I also wanted to point out with respect to
19 that contract, that it doesn't provide for unbridled
20 discretion on CoinLab's part in terms of payment of
21 invoices. In fact, it authorizes the payment of direct
22 costs plus an administrative fee of ten percent. So it
23 appears on the face, and I understand that it was -- this
24 was drafted by highly competent outside counsel, that on
25 the face of this agreement it appears to be a typical

1 kind of agreement. And, in fact, the arrange -- I think
2 one of the unfortunate pieces with respect to the debtor
3 right now is that all of us who aren't involved in
4 bitcoins are -- I think are struggling a little bit just
5 to understand --

6 THE COURT: We are.

7 MS. PEARSON: -- the industry. And that makes it,
8 I think, maybe appear somewhat differently from how, in
9 fact, it might be. There are terms that we're used to
10 dealing with that I think don't accommodate themselves
11 easily to this industry, and I think we're all trying to
12 figure that out, and so I think that there have perhaps
13 been some representations which were intended in good
14 faith, but perhaps because they don't fit into certain
15 forms or ways in which we're used to hearing the
16 information might not seem as clear as maybe they could
17 have been in retrospect.

18 So I also -- I would also just generally comment
19 that it wouldn't be that unusual for a parent to be
20 involved in the bankruptcy case of an affiliate and for
21 there to be common management.

22 I also want to comment with respect to the concern
23 about an expedited sale. You know, it appears to me that
24 the actual assets that are going to be sold are quite
25 discreet, and I think a good point has been made that

1 they should be able to be described on an exhibit to an
2 order that's clear, that interested purchasers could look
3 into. I think that this -- it appears that this -- the
4 market for this sale is highly specialized, but that it's
5 a known group that can be marketed to, and they aren't --
6 you know, with respect to Mr. Stehlik and I guess to
7 myself, they aren't necessarily aging lawyers sitting
8 around at their desks.

9 THE COURT: They're not us.

10 MS. PEARSON: Yeah, they're -- it's not me. And
11 so there are places that these people look and -- pretty
12 continuously and become -- and are aware of and can act
13 quickly. And so I don't think that -- and the debtor is
14 also going to seek to hire a particular PR firm to be
15 directed to those people. So I think the communication
16 is not going to be the same as selling bricks-and-mortar
17 types of assets.

18 I don't see how the proposed procedure favors
19 insider purchasers. CoinLab is not going to be a bidder.
20 Mr. Vessenes says that he's not going to be a bidder.
21 Certainly, the nature of any bidder's relationship to the
22 debtor would need to be disclosed subject -- you know,
23 for the Court's final approval of any order approving the
24 sale.

25 THE COURT: I mean, it's only a concern if some of

1 the common owners end up in a brand new corporation
2 formed in order to buy the assets.

3 MS. PEARSON: I understand that, Your Honor. And
4 that's certainly a legitimate concern.

5 And then, finally, I mean, and if it is such a
6 fantastic asset, guaranteed -- you know, that people are
7 so confident is going to make so much money, then there
8 should be lots of bidders --

9 THE COURT: Yeah. I think it's the opposite.

10 MS. PEARSON: -- and the objecting parties should
11 bid.

12 THE COURT: I think from my perspective it's the
13 opposite. Mr. Vessenes is saying that it's not. That
14 these are assets that are devaluing rapidly.

15 MS. PEARSON: That's certainly --

16 THE COURT: And Ms. Glynn Levin described them
17 basically as scrap by February.

18 MS. PEARSON: Well --

19 THE COURT: So I think they're not -- I guess I
20 thought the debtor's argument was they're not going to be
21 worth anything unless we unload them quickly.

22 MS. PEARSON: That's what I think the debtor's
23 argument is also. But I'm saying the objecting parties I
24 think are challenging that representation, and if --

25 THE COURT: Well, I'm not so sure. I think

1 Ms. Simonyan basically said we can make more money by
2 operating with this equipment for a couple of months and
3 then just trashing it. I mean, I guess that's what we're
4 trying to get at. What are --

5 MS. PEARSON: Well, but it --

6 THE COURT: -- these things really worth?

7 MS. PEARSON: But it appears -- well, it appears
8 that it's extremely difficult to establish a value at any
9 particular in time.

10 THE COURT: Right.

11 MR. VESSENES: I have estimates, actually. I just
12 haven't wanted to put them on the record in case we would
13 prejudice bidders from going over that.

14 THE COURT: Okay. And you don't -- you can't
15 talk.

16 MS. PEARSON: No. No. That makes sense.

17 And it also appears that, I mean, the value --
18 it's a highly volatile market, not just for the mining
19 equipment, but also for the bitcoin, and I think -- I
20 believe -- I can't speak for the debtor, but I believe
21 the debtor's intention is to continue operating until the
22 sale takes place. So if the Court did approve the sale,
23 until the equipment, the mining equipment changes hands,
24 it would continue to mine. It wouldn't just, like, today
25 be shut down. Subject, of course, to the availability of

1 the employees.

2 So those are all the comments that I have,

3 Your Honor.

4 THE COURT: All right.

5 Ms. Glynn Levin, now do you want to respond
6 briefly?

7 MS. GLYNN LEVIN: I'll try to make it brief,
8 Your Honor. I know Your Honor has heard a lot already
9 today.

10 I think the point has been made that just because
11 you have a complicated and perhaps complex industry where
12 there are a lot of questions about how things work and
13 there are a lot of questions about what the technology
14 is, that doesn't defeat our right to be able to be in
15 bankruptcy. That doesn't defeat a debtor's right to be
16 able to reorganize and sell. It's not required that we
17 have a simple, well understood, well established, common,
18 conventional industry in order to be in bankruptcy court.

19 This is new, and the fact that it is new does --
20 is perplexing to a lot of people, and we have done our
21 very best in trying to simplify it and making it as clear
22 as possible to everyone so that it is patently obvious
23 what is going on, how the accounting works, what the
24 assets are. We know who's involved. And it does take --
25 I mean, it has taken some time to get our collective

1 hands around this so that we can sort of convert the
2 information and the data into a form that is sort of
3 readily usable for all of the constituent parts of the
4 bankruptcy system. You know, I definitely get that.

5 So when Mr. Stehlik comes up and says, you know,
6 "What is this stuff? Gee, I don't get it." Well, you
7 know, he's a newcomer to the case. That's how I felt
8 when I first started off. I mean, I couldn't spell
9 "bitcoin." So it does take some time to start to get
10 there and understanding. That is not a reason, that's
11 not a ground to defeat our motion. And maybe the
12 contrary is true. Maybe the fact that we have something
13 that is so unique, we are bringing this, doing our best
14 to explain in sort of layman terms as well as possible
15 what we are doing, is the -- really the essence of this
16 motion.

17 I kind of have to object with the long discussion
18 about discovery. While I know the Court has been
19 concerned about disclosure and making sure that all of
20 the discovery is turned over, I mean, this is not a
21 discovery motion, and I wasn't -- didn't stand here
22 prepared to be addressing this.

23 Let's turn quickly to the operating agreement. I
24 think Ms. Pearson correctly identified the -- you know,
25 the pros and cons of that agreement, that it's not a

1 carte blanche to do whatever is -- whatever CoinLab
2 wants.

3 Your Honor specifically addressed the question of
4 should we under a 2004 proceeding be required to turn
5 over all of the underlying invoices, and I said that
6 would be burdensome, but we could do it. And Your Honor
7 said, no, that would be overly burdensome, so we did not
8 do it. It was not part of the court order, and I object
9 to the insinuation now that we withheld something that we
10 were supposed to turn over. It was expressly asked for
11 and not turned over because it was not part of the court
12 order.

13 In terms of the timing of the 2004, that was
14 strictly up to Bitvestment. The Court agreed to allow us
15 basically one week, a very short week to turn over a
16 volume, and I think the Court described it as overly
17 broad when we were in here a day or two before New Years,
18 and a volume was turned over on the 6th of January.

19 Now, there's been some sort of insinuation that
20 information was buried, and I resent that, because
21 Bitvestment has been asking time and time again, "Turn
22 over all the addresses. Turn over all the addresses."
23 And we have been saying, and I said in court, "Really?
24 You really want these? There are a hundred thousand
25 addresses out there that are essentially set aside as

1 sort of like empty vessels, and they are not being used."

2 And they said, "Yes. Turn over all the addresses." So

3 we did.

4 Now, the form of the addresses, the watermark, as
5 it got copied, does appear much darker than when it left
6 my office. I will say that, and I -- and the day the
7 initial production was supposed to be turned over, that
8 27 pages, Lane Powell did not tell me their office was
9 closed, so literally there was a court order requiring us
10 to turn over documents to an office that was closed on
11 New Years, and only through the efforts of a messenger
12 who managed to find his way up through the security
13 system and beg to deliver these things was it actually --
14 were we able to finally meet the terms of the court
15 order. And so with 24 hours, it would have -- I think it
16 would have been nice had we been told that Lane Powell
17 was going to be closed on the time that -- at the time
18 that we were required to turn them over.

19 I'll also point out that at the deposition of
20 Mr. Vessenes, which lasted a good eight hours so every
21 opportunity was there to ask any question of him, one
22 exhibit was turned over, and it's Exhibit 9. It is a
23 16-page document, and I'm happy to turn it over just like
24 Counsel has done, although they didn't put -- they didn't
25 Bates stamp it, so it just appears as a printout. And

1 what it is is a printout of exactly as Your Honor was
2 saying. It's all the addresses and all the activity on
3 CoinLab's active using accounts.

4 MR. VESSENES: Alydian.

5 MS. GLYNN LEVIN: Excuse me. Debtor's. The
6 debtor's accounts. All of the activity. So when they
7 came up after hours of saying, "Why didn't you turn these
8 things over," and then walked up and said, "Well, here's
9 Exhibit 9. Are these all your accounts?" They had them
10 all along.

11 THE COURT: So you're saying this Exhibit 9 was
12 produced by them?

13 MS. GLYNN LEVIN: This Exhibit 9 was produced by
14 them, Your Honor. They had had them --

15 THE COURT: Oh, okay. I guess I should --

16 MS. GLYNN LEVIN: They had them --

17 THE COURT: You can take this one back and give it
18 to --

19 MS. GLYNN LEVIN: -- all along, and the way to
20 match up that they are owned by the debtor is that the
21 first five or so -- five or six characters or so which
22 appeared on the spreadsheets that we produced match
23 exactly the account or the address numbers on there. So
24 they had them all along. The whole thing was a great big
25 subterfuge to really force the debtor to go through an

1 incredible amount of work, expend enormous resources, and
2 make a very large fuss, really, out of nothing. They
3 have all the information about the accounts. These
4 accounts are available now that they have the full
5 address, literally the full address with all 27 or 30
6 characters or whatever it is. I mean, literally now that
7 they know that those belong to the debtor, they can
8 actually go and see in real time the activity on them.
9 So it's a little hard to accept the objection that we
10 didn't turn over, that there's some information that's
11 being hidden. There were transfers between, among those
12 accounts. Those were all accounts held by the debtor.
13 They were not being sent out to third parties and
14 certainly not to CoinLab. Again, it's all very
15 transparent and very able to be determined.

16 I think the one thing that I did hear from Counsel
17 for Bitvestment is that she said it was intuitively true
18 and it is no secret that it's out there and -- that it is
19 increasingly difficult to mine. That was a big
20 concession, and I'm very pleased with her forthrightness
21 on that part. A big concession. It is intuitively true
22 it is becoming increasingly difficult to mine.

23 Now, I do ask this. Where is the declaration of
24 her client? Where is the declaration of Mr. Gallancy,
25 who is supposedly a financial -- a certified financial

1 analyst and some other kind of an expert in this
2 industry? There's no evidence from him. Zero. So
3 everything that has been done on this objection is just
4 to say, "You've not done your work, debtor. You've not
5 done your work." They have not shown one thing. They
6 have not produced one expert report. They have not even
7 produced one sentence of Mr. Gallancy's declaration to
8 say: You know, I don't think this is a good idea. It's
9 all argument.

10 In terms of the calculation, the value increased
11 80 times, you know, it's just -- it's statistics, and
12 it's really immaterial as to what exactly the value of a
13 bitcoin is at -- over the history of one year. To this
14 motion --

15 THE COURT: Okay. But just trying to be true to
16 the industry, and demonstrating maybe that I've learned
17 something from when we've started, we know, we all know,
18 that at present the total number of bitcoins that are
19 going to be issued is limited. So as bitcoins are mined,
20 that means there are fewer left available, so doesn't
21 that mean just as a matter of supply and demand that the
22 value of bitcoins is going to go up, setting aside things
23 like the Chinese and Overstock? But the fact is, the
24 fewer there are, just in that vacuum, the more valuable
25 they will be?

1 MS. GLYNN LEVIN: In that vacuum?

2 THE COURT: Right.

3 MS. GLYNN LEVIN: Yes.

4 THE COURT: In that vacuum.

5 MS. GLYNN LEVIN: But we don't operate in a
6 vacuum. We are operating in an international sphere with
7 multiple variable factors. I mean, this is an
8 economist's dream analysis to figure out all the factors,
9 I mean, and they could change daily, what factors
10 influence the price of bitcoin. I mean, I'll bet you you
11 could put that into a Google search and come up with lots
12 of different hits and lots of different analysis, and
13 market supply and demand is only one. Ability to use
14 them is another. What's going on in the field of
15 regulation by governments is another. I mean, there are
16 multiple factors here, and the debtor cannot control the
17 value of the -- the exchange value of the bitcoin. And
18 that isn't actually before the Court today. The debtor
19 can say, "Here's the history from the" -- it was high, it
20 was low, it's gone up again, it's gone up and down and up
21 and down. We can't control that. The only thing right
22 now we have a limited bit of control over is getting our
23 rigs out there to mine, and that, as we've shown, has
24 got -- and I -- what was the percentage increase? Some
25 thousands and thousands of percentage increase of

1 difficulty, going straight up.

2 I guess I also want to turn to now -- because I
3 don't want to beg the Court's patience for too, too long.

4 THE COURT: Okay. Well, I'm going to give you
5 four minutes.

6 MS. GLYNN LEVIN: I have four minutes.

7 In terms of the amount of time, it's not five
8 days. We're really talking from today 12 days. And the
9 news has already hit the press. We already have a PR
10 firm out there. Why didn't we start --

11 THE COURT: We do?

12 MS. GLYNN LEVIN: Well, we've negotiated a
13 contract with one. One has not been employed by the
14 Court.

15 THE COURT: So they've started advertising?

16 MS. GLYNN LEVIN: They have --

17 THE COURT: Okay. I stopped you. I don't want to
18 use your four minutes.

19 MS. GLYNN LEVIN: They have used -- they have --
20 this is -- this was a -- this is a tricky decision,
21 Your Honor. Do we leak the information out and get it
22 out there so that the time we actually sell it the news
23 is stale, or do we hold on to it and then make a big
24 splash? "Debtor is selling these things." Get out
25 there, get the excitement, figure out right at the right

1 time. How could we go out and start marketing something
2 where we had no idea where the Court was going to be in
3 terms of setting a floor?

4 THE COURT: Okay. That's why I asked you because
5 you said we already have a PR firm out there, and that's
6 why I asked you because we don't yet. Haven't hired
7 them. They haven't done anything yet.

8 MS. GLYNN LEVIN: They have been retained and they
9 are ready to go. I mean --

10 THE COURT: All right.

11 MS. GLYNN LEVIN: -- literally ready. We have
12 telephone calls set up this afternoon, and they are ready
13 to hit the button and set the ground running, and I would
14 like to set their application for appointment on
15 immediately. I mean literally this afternoon.

16 Can the debtor be trusted to make sound business
17 decisions? It's a -- this is a very -- this is a
18 judgment call, Your Honor. This is not an objective
19 standard. We have done our absolute best to put
20 everything out there. Where we had forms and reports
21 that didn't suit our industry, we modified them. We
22 supplemented. We amended our -- we amended -- we have
23 had no complaints from the U.S. trustee. Not one. He is
24 sitting there quietly listening and enjoying the story
25 here. Not one complaint from the U.S. trustee. Zero.

1 And ultimately --

2 THE COURT: Okay. Before you keep beating that
3 dead horse --

4 MS. GLYNN LEVIN: Yes.

5 THE COURT: -- let me just remind you, I am the
6 one who makes the decisions --

7 MS. GLYNN LEVIN: Yes.

8 THE COURT: -- not Mr. Buford.

9 MS. GLYNN LEVIN: I understand, but --

10 THE COURT: So I don't really care whether he
11 stands up or sits down.

12 MS. GLYNN LEVIN: I understand, Your Honor.

13 THE COURT: If he stood up, that would be of great
14 concern to me.

15 MS. GLYNN LEVIN: Okay.

16 THE COURT: And probably to you too, because that
17 would mean that all of a sudden maybe Mr. Buford does
18 have concerns. So fortunately for you, you're only
19 dealing with mine, Mr. Stehlik, and Ms. Simonyan.

20 MS. GLYNN LEVIN: What this does is it
21 characterizes the dynamic of this dispute. This is
22 really two private parties who have had litigation going
23 on in New York and who are now transferring and trying to
24 convert and sway this court to take their side in
25 litigation that doesn't even in some ways really belong

1 here, except to the extent that we are dealing with an
2 objection to claim.

3 Again, I'm certainly happy and -- you know, when I
4 look at that -- those watermarks too, I mean, I -- they
5 do look dark to me, and I am absolutely happy to
6 reproduce that production without the watermark or with
7 just something at the bottom. But there was some concern
8 that these would be used and circulated, and we -- and
9 unfortunately, the way it got photocopied, it looks very
10 dark. But the information below was not obscured, so
11 ultimately I'm not sure what the practical complaint is,
12 but if the Court would like us to reproduce those without
13 the watermark on top, I'm certainly willing to do that,
14 as I offered at the 2004 exam multiple times.

15 Again, a full audit of all of the addresses were
16 provided to the U.S. trustee.

17 Turning to the emails --

18 THE COURT: Okay. I want you to wrap up.

19 MS. GLYNN LEVIN: I will wrap --

20 THE COURT: I don't want to discuss the discovery
21 dispute. If they file a motion to compel, I'll respond
22 to it. I'm not making an order with regard to that
23 today.

24 MS. GLYNN LEVIN: I don't have too much else,
25 Your Honor. Your Honor has been very patient with this

1 process, and I appreciate -- my client appreciates the
2 time that the Court has spent in trying to learn where
3 this industry is. We have confidence that with Tim
4 Murphy in charge of an auction that that will be the best
5 way to ensure the -- sort of the neutrality of the
6 process. He could certainly file his auctioneer's
7 report. We will have our expert to go out and get the PR
8 out there and get the sale, to generate the excitement,
9 set that minimum bid of \$2,000 per terra-hash and see
10 where this goes. And we're willing to consider -- or
11 we'll consider what other contingencies there could be in
12 terms of a sale.

13 But the reality is, Your Honor, that we -- that
14 the systems need to get sold. No Chapter 7 trustee is
15 going to sell them. Your Honor said that. And to -- we
16 will continue to operate them up until, you know, the
17 moment that they're turned over to a new purchaser or
18 purchasers and sold. We ask the Court to grant the
19 motion and allow us to go ahead on that, on a sale.

20 Thank you.

21 THE COURT: Okay. I am not going to grant the
22 motion. I'm not saying never, and I'm going to give you
23 my conditions today for what I need before I'm going to
24 be prepared to do this.

25 I want to start with one of the last points

1 Ms. Glynn Levin just made, and that is the point that
2 this is in reality a two-party dispute, and I agree with
3 that, and I am very close to sua sponte dismissing this
4 case and letting the parties just fight it out in state
5 court or in federal court in New York, where perhaps they
6 ought to be. And so let me just lay what I think the
7 motivations are of the parties that are troubling to me
8 and their motivations on both sides that I am obviously
9 going to be watching.

10 On the debtor's side, I don't know as much about
11 this industry as I should, but I've learned enough so far
12 to be convinced that these machines, these so-called
13 systems, could be a lot like the Harleys I see from my
14 consumer debtors, and that means they're Mr. Vessenes's
15 and his colleagues' babies and that it will be a cold day
16 before they're willing to give them up. And I know that
17 the only place the debtor can get out of these contracts,
18 which I have held are not executory, is here. And I know
19 that I will therefore be very concerned about whether
20 insiders or related parties are the ones bidding at an
21 auction.

22 And Mr. Stehlik and others have kind of --
23 Mr. Stehlik hit it on the head when he said what we are
24 to believe is that all this effort by the debtor and
25 CoinLab has occurred over the last few months, all

1 culminating in equipment that is worth a couple
2 hundred -- \$400,000. And Mr. Vessenes is shaking his
3 head, which is why I'm going to give his my conditions
4 for going forward.

5 MR. VESSENES: Yeah.

6 THE COURT: Maybe they are worth \$10 million, and
7 if somebody -- if that's true, somebody is going to have
8 to tell me that, but today that's not in the record.
9 What I know, however, is the debtor has great
10 incentive -- I think the debtor's principals will have
11 great incentive to find a way into continuing this
12 business, given the personal and financial investment
13 they have obviously made in it in the last few weeks.

14 On the flip side, I know that Bitvestment has a
15 contract and a legal argument that it can force specific
16 performance on the debtor, and that if it is successful
17 in doing that, then none of the other creditors get paid.
18 That bitcoin continues to go up in value. I understand
19 the volatility, but the basic premise of bitcoin right
20 now is that people are betting that its value is going to
21 go up. The more of it that is mined, the less of it is
22 there. And Mr. Gallancy and those on his side
23 are interested in turning their investment into their own
24 bitcoin gold mine, if you will.

25 So I start with the proposition that I think that

1 the parties' motivations are on the table. We know what
2 they are.

3 My biggest concern is I do not believe this
4 evidentiary record convinces me that the debtor is better
5 off to sell this equipment. And before I am willing to
6 consider that, I need accurate monthly financial reports.
7 Maybe it's not true that the debtor didn't just make
8 \$1.8 million in November and have no costs, but I don't
9 have December's report. I don't have any breakdown of
10 what the actual expenses incurred were. Therefore, I
11 have no idea whether this debtor is profitable or not.
12 All I have in the record shows me that the debtor is
13 wildly profitable, and that if this debtor could make
14 \$1.8 million a month and not incur any expenses, it would
15 be one of the most successful debtors I have ever had,
16 and we would just stay at that for a few months and
17 everybody would be more than paid, and the debtor could
18 go off on its merry way and do its thing. But I think
19 that is not the case. I think there are expenses here.
20 Before I am willing to go forward, I need to have
21 financial reports that honestly show me what the revenue
22 is and what the expenses are.

23 With regard to CoinLab, I am not satisfied with
24 these huge payments to CoinLab without any court
25 approval. We have post-petition agreements and payments;

1 prepetition, possibly; very large preference
2 transactions. And I agree with Ms. Simonyan that we will
3 ultimately have to get to the underlying cost that has
4 been incurred by CoinLab and passed on to the debtor. If
5 it is, in fact, a direct cost, as argued by Ms. Pearson
6 and as stated in the contract, so it's just a
7 pass-through of costs that we can verify, fine. But
8 Mr. Stehlik points out that here we have these huge costs
9 being incurred relative to equipment that the debtor is
10 now telling us is going to be worthless if we don't get
11 rid of it immediately, and that is, frankly, hard for me
12 to believe.

13 So I am concerned about post-petition contracts in
14 which CoinLab has entered which involve huge monthly
15 lease obligations. Those are obligations of CoinLab.
16 The debtor can't control those. CoinLab doesn't have to
17 get any approval from me as to whether or not those
18 leases can be signed. However, when CoinLab comes in
19 here to seek reimbursement from the debtor for what is, I
20 believe, \$198,350 per month in lease obligations, CoinLab
21 had better have some evidence that these are market
22 leases. Otherwise, I have concerns that these expenses
23 are being trumped up in order to draw money out of this
24 debtor and away from the creditors here.

25 Mr. Vessenes is reluctant to tell me how much he

1 thinks these systems are worth because, like all
2 Chapter 11 debtors, he is concerned that if he takes any
3 kind of stand in public that will telegraph to others
4 what they can bid. That is the case in all auctions in
5 Chapter 11. That's just how we do it. That's just a
6 fact. And the way you deal with that is at a minimum
7 you've got to give me an estimate of what the universe
8 might be. It can be anywhere from a minimum of \$400,000
9 to \$25 million. What I need is for someone -- and maybe
10 the expert is Mr. Vessenes. If it is, time for you to
11 tell me because I'm not going into a sale where the
12 debtor shows \$1.8 million in revenue after only one month
13 and I am going to get \$400,000 for equipment. That's
14 just not going to happen.

15 MR. VESSENES: I'd be happy --

16 THE COURT: I need more certainty that there will
17 actually be competitive bidding that could generate a
18 significant amount of money. Otherwise, it may very well
19 be that that same return can be generated by operating
20 this business and trashing the equipment at the end, just
21 giving it up.

22 I know what I will hear in responses: "But you
23 haven't considered the fact that the employees have
24 threatened to leave." I frankly don't care. This is a
25 common theme in Chapter 11. In almost every corporate

1 Chapter 11 all of a sudden employees want to leave and
2 they want to be paid big dollars at the expense of
3 everybody else in the case so that we can all beg them
4 and get down on our knees and be thankful that they're
5 going to save us. From what? That which they wrought
6 upon the creditors. So we can't let the demands of a few
7 people drive the entire case. If they want to leave,
8 they should leave. I suspect that they don't. And if
9 they do want to leave and there aren't people to come in
10 and operate this business, then we're left where we are
11 today, which is we need to sell the equipment.

12 And I haven't heard anything to convince me that
13 this is a kind of sale like a store where you've got, you
14 know, 150 employees who come in every day and stack
15 shelves and man cash registers and do accounting and do
16 all that's necessary to run a business, that it really
17 does generate more money upon sale if all that is in
18 place. I'm not seeing that evidence. If that's the
19 case, then I think the debtor needs to put that into some
20 form of evidence that I can understand: Hey, the fact
21 that it's in a place with people who can operate it will
22 actually generate more money versus scrap, turn it off,
23 unplug it.

24 I don't know what the terms of these leases are at
25 all with regard to this equipment. If it's the kind of

1 thing that really is hard to move, then it really
2 surprises me that on December 19, 2013, the debtor and
3 CoinLab installed ten rigs in this Wow lease headquarters.

4 Post-petition transactions cannot continue. In
5 the first place, the monthly report, that's going to be
6 prepared for December. And if there are some correction
7 that needs to be made for November, then it better be
8 made. Incentive compensation does not get paid in a
9 Chapter 11 unless there is a motion for authority to pay
10 on notice to creditors and an order signed by me.

11 Post-petition contracts. I suppose the debtor
12 could argue this was in the ordinary course of business,
13 but I'm going to say it's not. A contract signed between
14 the debtor and a related entity which is signed by the
15 person that I am counting on to be in charge of the
16 debtor in possession, Mr. Vessenes, when he signs with
17 both hats on, I have to have all of my systems on high
18 alert. And with a contract like this, it says a number
19 of things that are interesting in the proprietary
20 materials section. We actually have, "CoinLab hereby
21 assigns and transfers to Alydian, without separate
22 consideration, all right, title, and interest that
23 CoinLab may have in the proprietary materials." I don't
24 know what that means or why that's in here, but things
25 like that concern me when the person who is supposedly

1 the business person interacting with Ms. Glynn Levin has
2 signed on behalf of both companies. This is not valid
3 until there is a motion to approve it, notice to
4 creditors, and an order signed by me.

5 Let me go back to see if there are any other
6 things that I need.

7 I do want you to reproduce, Ms. Glynn Levin. The
8 only thing I'll say about the production today is that
9 you need to reproduce those documents without the
10 watermark. And I am assuming when Bitvestment starts
11 making its disclosures it will not put a watermark all
12 over the front of its documents.

13 Let's review the major conditions that I have
14 before I will reconsider this motion to sell:

15 I need accurate and honest income and expense
16 information for November and December.

17 I need a clear description of the property. I
18 don't want there to be reliance on the fact that
19 everybody knows what it is. I think it is very unclear
20 from this operations agreement and the way it says that
21 CoinLab essentially owns all this stuff. So there must
22 be an exhibit that actually describes what the system
23 includes and how many there are. I understand that we
24 don't want to make representations about what that system
25 can accomplish, but I think there must be a way to

1 describe it so that the estate is making an accurate and
2 honest representation to the public about what's for
3 sale.

4 I need a declaration from Mr. Vessenes which
5 addresses the value of this equipment in more detail for
6 me so that I know more than just what the minimum bid is
7 going to be.

8 Every time we do an auction in bankruptcy court we
9 don't know what we're going to get, but over the years
10 I've learned that I can be surprised. If you had told me
11 that Tully's would sell for what it did for, I would have
12 said no way. I had another case where everybody got paid
13 in full, and nobody saw it coming. And it involved
14 technology. So all I need to know is that there's
15 something more here than \$400,000, and if there isn't, if
16 it is \$400,000, then I can compare that to the income and
17 the expenses and the net income and make a decision about
18 whether or not that is actually in the best interest of
19 creditors. In this record, I can't see that this is in
20 the best interest of the creditors.

21 And I am concerned about the debtor's business
22 judgment, which I think may be clouded by the debtor's
23 own interests, the interests of its affiliates, and the
24 animosity toward what I agree is a bitter enemy. But
25 that doesn't change the fact, as Ms. Simonyan says, that

1 Bitvestment has every right to exercise the legal rights
2 that it has, and it's clear that that will continue in
3 the case, and I am worried about the expenses.

4 With regard to the PR firm, I haven't seen that
5 application, but, again, that's part of the economics of
6 the sale. In order to determine whether the sale makes
7 any sense, we need to know what the expenses of the sale
8 are going to be. Presumably, Murphy is going to take a
9 cut. We need to know what that is. Presumably, the PR
10 firm is going to have to be paid. We need to know
11 what -- if Murphy takes 20 percent and the PR firm takes
12 50, you know, and we're down to 200,000, then that makes
13 it a totally different case.

14 So, Ms. Glynn Levin, I'm going to leave it to you.
15 Tee it up however you want, but you're going to need to
16 re-file the motion. I am not persuaded that there is an
17 emergency here that requires me to unload this equipment
18 without taking the time to actually analyze what's at
19 stake here, and I have concerns about what's been going
20 on in the case.

21 And so, Mr. Buford, I hope that you are perfectly
22 satisfied, and if you are, that's great, and I won't see
23 a motion to dismiss or convert.

24 But if he's not, then I expect somebody to request
25 relief that they think is appropriate if there are

1 problems with the management of the company.

With that, we will be at recess. Thank you.

3 MR. STEHLIK: Thank you.

4 MS. SIMONYAN: Thank you.

5 THE CLERK: Please rise.

6 (Hearing concluded.)

7 CERTIFICATE

8 STATE OF WASHINGTON

10 COUNTY OF KING

11 I, the undersigned, under my commission as a Notary
12 Public in and for the State of Washington, do hereby
13 certify that the foregoing digitally recorded proceedings
14 were transcribed under my direction as a certified
15 transcriptionist; and that the transcript is true and
16 accurate to the best of my knowledge and ability; that I
17 am not a relative or employee of any attorney or counsel
18 employed by the parties hereto, nor financially
19 interested in its outcome.

20

Signed and dated this 14th day of January, 2014

22

23

24 by [s] Shanna Barr

25 SHANNA BARR, CETD